

16D C.J.S. Constitutional Law VIII XXI Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings


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16D C.J.S. Constitutional Law § 1909

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

a. Overview; Due Process Within Civil Proceedings

§ 1909. Applicability of due process in civil and criminal proceedings

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Due process applies to both civil and criminal proceedings and requires that relief be afforded in a court of competent jurisdiction and that a defendant have notice and an opportunity to be heard.

The guaranties of due process of law in a state constitution have generally been held to apply to both civil and criminal proceedings.¹ The fundamental rights of due process may not be abrogated by a legislature.² "Due process of law," in the context of judicial proceedings, is defined as the course of legal proceedings according to the rules and principles established in our system of jurisprudence for the protection and enforcement of private rights.³ The Fourteenth Amendment imposes on a state the standards necessary to insure that judicial proceedings are fundamentally fair.⁴

The Federal Due Process Clause limits state legislative and adjudicative jurisdiction.⁵ Any government action that substantially and unreasonably interferes with an individual's cause of action or precludes an opportunity to be heard violates procedural due process.⁶

Of course, due process is not a guaranty against erroneous or unjust decisions by courts which have jurisdiction of the parties and the subject matter,⁷ and procedural due process rules are meant to protect persons not from deprivation but from mistaken or unjustified deprivation of life, liberty, or property.⁸ Due process is not concerned with technical formalism.⁹ Rather, it is the substance that determines whether a litigant has been deprived of a substantial right.¹⁰ The right to due process is not a license to ignore the rules necessary to guarantee a fair trial,¹¹ and when the principles of due process attach, there is a certain level of procedural fairness that must be afforded an affected party.¹²

The constitutional guaranties of due process of law do not require that parties be entitled to any particular form of action or any particular method of procedure for the protection of rights or the redress of wrongs.¹³ These guaranties do require, however, that the substance of property rights be preserved,¹⁴ that the courts accord the parties due process in determining procedural and substantive law,¹⁵ and that some adequate and appropriate remedy be afforded for the vindication of personal and property rights.¹⁶

Due process guaranties require that a remedy be by a regular and orderly mode of procedure¹⁷ and by "due course of law."¹⁸ Furthermore, due process requires that relief be afforded in a court of competent jurisdiction, and that defendant shall have notice, and an opportunity to be heard in his or her defense, and the courts have enumerated such essentials as constituting the basic requisites of due process of law.¹⁹ If these conditions are complied with, there is no lack of due process.²⁰ Mere errors or irregularities in the proceedings are not a denial of due process²¹ if an adequate provision for review of the offending judicial decision is available.²²

The more valuable the right sought to be deprived, the more procedural safeguards will be interposed,²³ but a temporary deprivation of rights may not require as large a measure of procedural due process protection as a permanent deprivation.²⁴ Procedural due process is a flexible concept,²⁵ calling for such procedural protection as the particular situation demands,²⁶ to be determined by considering the nature of the government function involved and the private interest affected by the governmental action.²⁷ Furthermore, the extent to which procedural due process must be afforded a litigant is influenced by the extent to which a litigant may be condemned to suffer a grievous loss and depends upon whether the person's interest in avoiding that loss outweighs the governmental interest in a summary adjudication.²⁸

Before a state may terminate a claim for failure to comply with procedural requirements such as statutes of limitations, due process requires that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner.²⁹ In civil proceedings where the individual interests at stake are both particularly important and more substantial than mere loss of money, due process places a higher burden on the State.³⁰

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Footnotes

- 1 Cal.—*Arnett v. Office of Admin. Hearings*, 49 Cal. App. 4th 332, 56 Cal. Rptr. 2d 774 (3d Dist. 1996).
Wis.—*Oddsens v. Board of Fire and Police Com'rs for City of Milwaukee*, 108 Wis. 2d 143, 321 N.W.2d 161 (1982).
Same protection not required
Due process requires more protection in criminal cases, and while the same protection can be afforded in civil cases, it is not required.
Idaho—*Garcia v. State Tax Com'n of State of ID*, 136 Idaho 610, 38 P.3d 1266 (2002).
Prisoner

A prisoner has a due process right to defend himself or herself in a civil action.

Ind.—[Sabo v. Sabo](#), 812 N.E.2d 238 (Ind. Ct. App. 2004).

Provision of counsel for indigent defendant in civil contempt proceeding

The Due Process Clause does not always require the provision of counsel in civil proceedings where incarceration is threatened, and in determining whether the clause requires a right to counsel here, a court must take account of opposing interests, as well as consider the probable value of additional or substitute procedural safeguards.

U.S.—[Turner v. Rogers](#), 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).

Ala.—[Ex parte Western Mental Health Center](#), 884 So. 2d 835 (Ala. 2003).

Fla.—[D.M.T. v. T.M.H.](#), 129 So. 3d 320 (Fla. 2013).

U.S.—[In re Havens](#), 229 B.R. 613 (Bankr. D. N.J. 1998).

U.S.—[Lassiter v. Department of Social Services of Durham County, N. C.](#), 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981).

Treble and punitive damages

To allow treble damages and punitive damages on a claim of malicious restraint of trade would violate due process.

Wis.—[John Mohr & Sons, Inc. v. Jahnke](#), 55 Wis. 2d 402, 198 N.W.2d 363 (1972).

"Forthwith" subpoena as invalid

Where a "forthwith" subpoena required the immediate delivery of documents without giving the subpoenaed party sufficient opportunity to consult with counsel regarding the subpoena, the subpoena as originally issued was invalid in that it denied the owner of the records a reasonable opportunity to procure a judicial determination of the legal efficacy or propriety of the process and denied due process of law.

N.J.—[Application of Attorney General of N. J.](#), 116 N.J. Super. 143, 281 A.2d 284 (Ch. Div. 1971).

U.S.—[Adventure Communications, Inc. v. Kentucky Registry of Election Finance](#), 191 F.3d 429 (4th Cir. 1999); [American Charities for Reasonable Fundraising Regulation, Inc. v. Pinellas County](#), 221 F.3d 1211 (11th Cir. 2000).

U.S.—[Heinrich ex rel. Heinrich v. Sweet](#), 62 F. Supp. 2d 282 (D. Mass. 1999).

Ill.—[Kazubowski v. Kazubowski](#), 45 Ill. 2d 405, 259 N.E.2d 282 (1970).

U.S.—[Carey v. Piphus](#), 435 U.S. 247, 98 S. Ct. 1042, 55 L. Ed. 2d 252 (1978).

Cal.—[Campbell v. Board of Dental Examiners](#), 17 Cal. App. 3d 872, 95 Cal. Rptr. 351 (2d Dist. 1971).

Cal.—[Campbell v. Board of Dental Examiners](#), 17 Cal. App. 3d 872, 95 Cal. Rptr. 351 (2d Dist. 1971).

Mo.—[State v. Harris](#), 425 S.W.2d 148 (Mo. 1968).

Kan.—[Wertz v. Southern Cloud Unified School Dist. No. 334](#), 218 Kan. 25, 542 P.2d 339 (1975).

U.S.—[Mitchell v. W. T. Grant Co.](#), 416 U.S. 600, 94 S. Ct. 1895, 40 L. Ed. 2d 406, 15 U.C.C. Rep. Serv. 263 (1974); [Yakus v. U. S.](#), 321 U.S. 414, 64 S. Ct. 660, 88 L. Ed. 834 (1944); [Neblett v. Carpenter](#), 305 U.S. 297, 59 S. Ct. 170, 83 L. Ed. 182 (1938); [N.L.R.B. v. Mackay Radio & Telegraph Co.](#), 304 U.S. 333, 58 S. Ct. 904, 82 L. Ed. 1381 (1938).

Idaho—[State v. Griffith](#), 97 Idaho 52, 539 P.2d 604 (1975).

Wis.—[State ex rel. Strykowski v. Wilkie](#), 81 Wis. 2d 491, 261 N.W.2d 434 (1978).

U.S.—[U.S. v. Pink](#), 315 U.S. 203, 62 S. Ct. 552, 86 L. Ed. 796 (1942).

N.J.—[State by Parsons v. Standard Oil Co.](#), 5 N.J. 281, 74 A.2d 565 (1950), judgment aff'd, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).

U.S.—[Brinkerhoff-Faris Trust & Savings Co. v. Hill](#), 281 U.S. 673, 50 S. Ct. 451, 74 L. Ed. 1107 (1930).

N.J.—[State v. Otis Elevator Co.](#), 12 N.J. 1, 95 A.2d 715 (1953).

U.S.—[Shemaitis v. Reid](#), 193 F.2d 119 (7th Cir. 1951).

Not coextensive with civil rights statute

To satisfy the requirement of due process, a state remedy for negligent deprivation of property need not provide relief coextensive with that afforded by the civil rights statute.

U.S.—[Loflin v. Thomas](#), 681 F.2d 364 (5th Cir. 1982).

Partition of personalty held by entireties

Fla.—[Muhlrads v. Muhlrads](#), 375 So. 2d 24 (Fla. 3d DCA 1979).

- 17 U.S.—*International Shoe Co. v. State of Wash.*, Office of Unemployment Compensation and Placement, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95, 161 A.L.R. 1057 (1945); *Glater v. Eli Lilly & Co.*, 744 F.2d 213 (1st Cir. 1984); *Martin v. Neuschel*, 396 F.2d 759 (3d Cir. 1968).
 - 18 Cal.—*Heffernan v. Bennett & Armour*, 110 Cal. App. 2d 564, 243 P.2d 846 (1st Dist. 1952).
Ind.—*McIntosh v. Melroe Co.*, a Div. of Clark Equipment Co., Inc., 729 N.E.2d 972 (Ind. 2000).
 - 19 U.S.—*Lindsey v. Normet*, 405 U.S. 56, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972); *LaPorta v. City of Chicago*, 2015 WL 1888810 (N.D. Ill. 2015).
Alaska—*Maness v. Gordon*, 325 P.3d 522 (Alaska 2014).
Cal.—*Barry v. OC Residential Properties, LLC*, 194 Cal. App. 4th 861, 123 Cal. Rptr. 3d 727 (4th Dist. 2011).
Del.—*Eberly v. Eberly*, 489 A.2d 433 (Del. 1985).
Ga.—*Thomas v. Johnson*, 329 Ga. App. 601, 765 S.E.2d 748 (2014).
Neb.—*Newman v. Rehr*, 10 Neb. App. 356, 630 N.W.2d 19 (2001), *aff'd* on other grounds, 263 Neb. 111, 638 N.W.2d 863 (2002).
- Class action**
Due process requires that notice in a class action present a fair recital of the subject matter and proposed terms and give an opportunity to be heard to all class members.
U.S.—*Juris v. Inamed Corp.*, 685 F.3d 1294 (11th Cir. 2012), *cert. denied*, 133 S. Ct. 940, 184 L. Ed. 2d 726 (2013); *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626 (N.D. Cal. 1978), *judgment aff'd*, 645 F.2d 699, 31 Fed. R. Serv. 2d 575 (9th Cir. 1981).
- Reduction of support payments**
In proceeding brought by a wife for specific performance of a separation agreement, the trial court's reduction of the husband's child support payments without notice and opportunity to be heard deprived the wife of her constitutional right to due process.
N.C.—*Van Nynatten v. Van Nynatten*, 113 N.C. App. 142, 438 S.E.2d 417 (1993); *Mann v. Mann*, 57 N.C. App. 587, 291 S.E.2d 794 (1982).
- 20 U.S.—*American Ry. Express Co. v. Commonwealth of Kentucky*, 273 U.S. 269, 47 S. Ct. 353, 71 L. Ed. 639 (1927); *Application of Eisenberg*, 654 F.2d 1107, 32 Fed. R. Serv. 2d 660, 60 A.L.R. Fed. 915 (5th Cir. 1981); *U.S. v. Bostic*, 336 F. Supp. 1312 (D.S.C. 1971), *judgment aff'd*, 473 F.2d 1388 (4th Cir. 1972).
Ala.—*Hudson v. Chancey*, 385 So. 2d 61 (Ala. Civ. App. 1980).
Cal.—*Billings v. Edwards*, 120 Cal. App. 3d 238, 174 Cal. Rptr. 722 (2d Dist. 1981).
La.—*Wicker v. Coca-Cola Bottling Co.*, 418 So. 2d 1378 (La. Ct. App. 5th Cir. 1982), *writ denied*, 423 So. 2d 1148 (La. 1982).
- Abatement of suit**
Where an employee had instituted suit against a corporate employer in a complaint misnaming the corporation before the corporation sued the employee to recover damages for conversion, abatement of the corporation's suit against the employee did not violate due process on the ground that it had not been given notice of the employee's action against it.
Tex.—*Astro Sign Co. v. Sullivan*, 518 S.W.2d 420 (Tex. Civ. App. Corpus Christi 1974), *writ refused n.r.e.*, (June 4, 1975).
- Dismissal of case for laches**
The fact that the judge's clerk might have, in an ex parte communication with one of the parties, given assurances that laches was not an issue did not render a subsequent decision of the court dismissing the action because of laches; a denial of due process as an ex parte communication with judge's clerk could not be condoned and should not be relied upon.
U.S.—*Environmental Defense Fund, Inc. v. Alexander*, 614 F.2d 474 (5th Cir. 1980).- 21 U.S.—*American Ry. Express Co. v. Commonwealth of Kentucky*, 273 U.S. 269, 47 S. Ct. 353, 71 L. Ed. 639 (1927); *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 34 Fed. R. Serv. 3d 1463 (5th Cir. 1996); *Fehlhaber v. Fehlhaber*, 681 F.2d 1015 (5th Cir. 1982); *In re National Medical Imaging, LLC*, 439 B.R. 837 (Bankr. E.D. Pa. 2009).
Ill.—*Levitt v. Hammonds*, 256 Ill. App. 3d 62, 194 Ill. Dec. 783, 628 N.E.2d 280 (1st Dist. 1993).
- 22 U.S.—*Diggs v. Pennsylvania Public Utility Commission*, 180 F.2d 623 (3d Cir. 1950).
Colo.—*Melville v. Weybrew*, 108 Colo. 520, 120 P.2d 189 (1941).

N.Y.—*Smith v. Board of Educ., Kings Park Cent. School Dist.*, 107 A.D.2d 749, 484 N.Y.S.2d 602, 22 Ed. Law Rep. 876 (2d Dep't 1985).

23 W. Va.—*North v. West Virginia Board of Regents*, 160 W. Va. 248, 233 S.E.2d 411 (1977).

24 W. Va.—*North v. West Virginia Board of Regents*, 160 W. Va. 248, 233 S.E.2d 411 (1977).

25 U.S.—*Gilbert v. Homar*, 520 U.S. 924, 117 S. Ct. 1807, 138 L. Ed. 2d 120, 118 Ed. Law Rep. 590 (1997).

Md.—*Riger v. L and B Ltd. Partnership*, 278 Md. 281, 363 A.2d 481 (1976).

Wis.—*State ex rel. Strykowski v. Wilkie*, 81 Wis. 2d 491, 261 N.W.2d 434 (1978).

26 W. Va.—*North v. West Virginia Board of Regents*, 160 W. Va. 248, 233 S.E.2d 411 (1977).

Wis.—*State ex rel. Strykowski v. Wilkie*, 81 Wis. 2d 491, 261 N.W.2d 434 (1978).

27 U.S.—*Turner v. Rogers*, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).

Cal.—*People v. Superior Court (Howard)*, 70 Cal. App. 4th 136, 82 Cal. Rptr. 2d 481 (6th Dist. 1999), as modified, (Mar. 23, 1999).

Factors considered

The factors considered to determine fundamental fairness under due process include (1) the nature of the private interest that will be affected, (2) the comparative risk of an erroneous deprivation of that interest with and without additional or substitute procedural safeguards, and (3) the nature and magnitude of any countervailing interest in not providing additional or substitute procedural requirements.

U.S.—*Turner v. Rogers*, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).

Ministerial actions

Ministerial actions by government generally do not implicate procedural due process because they are essentially automatic based on whether certain fixed standards and objective measurements have been met.

Cal.—*Sustainability of Parks, Recycling and Wildlife Legal Defense Fund v. County of Solano Dept. of Resource Management*, 167 Cal. App. 4th 1350, 84 Cal. Rptr. 3d 889 (1st Dist. 2008).

28 U.S.—*Smith v. Edmiston*, 431 F. Supp. 941 (W.D. Tenn. 1977).

Due process applies to claim preclusion in class actions

Before the bar of claim preclusion may be applied to the claim of an absent class member, it must be demonstrated that invocation of the bar is consistent with due process. An absent class member may collaterally attack the prior judgment on the ground that to apply claim preclusion would deny him due process.

U.S.—*Juris v. Inamed Corp.*, 685 F.3d 1294 (11th Cir. 2012), cert. denied, 133 S. Ct. 940, 184 L. Ed. 2d 726 (2013).

Procedural due process a question of law

The determination of whether procedures satisfy procedural due process presents a question of law.

Neb.—*State v. Bormann*, 279 Neb. 320, 777 N.W.2d 829 (2010).

29 Neb.—*Liljestrand v. Dell Enterprises, Inc.*, 287 Neb. 242, 842 N.W.2d 575 (2014).

Tenn.—*Harris v. State*, 301 S.W.3d 141 (Tenn. 2010).

30 N.J.—*In re Civil Commitment of D.L.*, 351 N.J. Super. 77, 797 A.2d 166 (App. Div. 2002).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

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§ 1910. Defenses

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There is no absolute constitutional right to particular affirmative defenses once they have been created.

There is no absolute constitutional right to particular affirmative defenses once they have been created.¹ Certainly any abolition of an affirmative defense must satisfy the notions of fairness dictated by due process jurisprudence.² However, that recognition is quite different from creating an absolute bar to the elimination of affirmative defenses.³

The defense of complicity in an action under a dram shop act does not deprive a plaintiff of due process of law.⁴

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Footnotes

¹ Fla.—[Agency for Health Care Admin. v. Associated Industries of Florida, Inc.](#), 678 So. 2d 1239 (Fla. 1996).

- 2 Fla.—[Agency for Health Care Admin. v. Associated Industries of Florida, Inc.](#), 678 So. 2d 1239 (Fla. 1996).
3 Fla.—[Agency for Health Care Admin. v. Associated Industries of Florida, Inc.](#), 678 So. 2d 1239 (Fla. 1996).
4 Ill.—[Merritt v. Chonowski](#), 58 Ill. App. 3d 192, 15 Ill. Dec. 588, 373 N.E.2d 1060 (3d Dist. 1978).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

a. Overview; Due Process Within Civil Proceedings

§ 1911. What law governs

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A court's power to apply its own state's law in a case that affects another state is limited by the Due Process Clause.

A court's power to apply its own state's law in a case that affects another state is limited by the Due Process Clause.¹ In order for a state's substantive law to be selected in a constitutionally permissible manner, that state must have a significant contact or a significant aggregation of contacts, creating state interests, such that the choice of its laws is neither arbitrary nor fundamentally unfair.² In order for contacts with the state of the forum to be sufficient to make application of its law consistent with due process, they must not be too slight and casual.³

When parties' expectations are rationally based upon one state's laws, or when their rational expectations are not based upon the laws of some other state, it violates due process to breach those expectations by applying the unexpected law.⁴ In this connection, when a suit is brought on a contract in a jurisdiction other than the one which governs the rights and obligations

thereunder, a right lawfully vested under the law of the latter jurisdiction may not be ignored by the forum if that state has no significant connection with the contract obligations.⁵

Where there are adequate points of contact with several jurisdictions, the application of the local law of either jurisdiction is acceptable under due process.⁶ Due process does not require that a state, in adjudicating the division of property of its citizens who are before its courts, ignore its own laws and look to the law of each state in which rights to the property originated to determine the effect of the divorce of such persons upon those rights.⁷

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Footnotes

- 1 U.S.—*Lehman Bros. Commercial Corp. v. Minmetals Intern. Non-Ferrous Metals Trading Co.*, 179 F. Supp. 2d 118 (S.D. N.Y. 2000).
Tex.—*Compaq Computer Corp. v. Lapray*, 135 S.W.3d 657, 53 U.C.C. Rep. Serv. 2d 483 (Tex. 2004).
- 2 U.S.—*Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 105 S. Ct. 2965, 86 L. Ed. 2d 628, 2 Fed. R. Serv. 3d 797 (1985); *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 101 S. Ct. 633, 66 L. Ed. 2d 521 (1981); *Budget Rent-A-Car System, Inc. v. Chappell*, 407 F.3d 166 (3d Cir. 2005).
Ill.—*Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill. App. 3d 538, 278 Ill. Dec. 276, 798 N.E.2d 123 (5th Dist. 2003).
Kan.—*Brenner v. Oppenheimer & Co. Inc.*, 273 Kan. 525, 44 P.3d 364 (2002).
Mich.—*Frydrych v. Wentland*, 252 Mich. App. 360, 652 N.W.2d 483 (2002).
Products liability
The contacts between Nebraska and a products liability action brought in Minnesota against the manufacturer of a truck were sufficient to render application of Nebraska law to the action consistent with due process where the accident occurred in Nebraska; at the time of the accident the plaintiff and husband resided and worked in Nebraska; except for a brief period the child received all medical treatment in Nebraska; the vehicle involved in the accident was purchased, garaged, manufactured, and insured in Nebraska and was modified in Nebraska; and the manufacturer of the truck did business in Nebraska.
U.S.—*Nesladek v. Ford Motor Co.*, 876 F. Supp. 1061 (D. Minn. 1994), judgment aff'd, 46 F.3d 734 (8th Cir. 1995).
"Stacking" of uninsured motorist coverage
The Due Process Clause was not violated by application of the law of the forum to allow "stacking" of uninsured motorist coverage to compensate a widow whose husband was killed in an out-of-state traffic accident where although the policy was delivered in that state and at the time of the accident all the parties were residents of that state the husband had worked in the forum state for many years preceding his death; at all times the insurer was present and doing business in the forum state and the widow, for bona fide reasons, became a resident of the forum state prior to the institution of the litigation; and the fact that the husband was not killed while commuting to work in the forum state did not dictate a different result.
U.S.—*Allstate Ins. Co. v. Hague*, 449 U.S. 302, 101 S. Ct. 633, 66 L. Ed. 2d 521 (1981).
- 3 Minn.—*Hime v. State Farm Fire & Cas. Co.*, 284 N.W.2d 829 (Minn. 1979).
Insufficient contacts
U.S.—*Wickenhauser v. Edward D. Jones & Co.*, 953 F. Supp. 286 (E.D. Mo. 1996).
- 4 U.S.—*McCluney v. Joseph Schlitz Brewing Co.*, 649 F.2d 578 (8th Cir. 1981), judgment aff'd, 454 U.S. 1071, 102 S. Ct. 624, 70 L. Ed. 2d 607 (1981).
- 5 Fla.—*Carriers Ins. Co. v. LeRoy*, 309 So. 2d 35 (Fla. 3d DCA 1975).
- 6 Haw.—*Peters v. Peters*, 63 Haw. 653, 634 P.2d 586 (1981).
Decedent as resident of forum state and domiciliary of foreign country
In light of the decedent's residence for many years in the forum state, her intention to have its law apply in the probate of her will, the physical location of her assets both in the forum state and the foreign country, and the fact that she was a domiciliary of a foreign country when she died, there were adequate points of

contact with both jurisdictions to render application of the local law of either acceptable under due process standards of reasonableness and fundamental fairness.

N.Y.—*Estate of Renard*, 108 Misc. 2d 31, 437 N.Y.S.2d 860 (Sur. Ct. 1981), *aff'd*, 85 A.D.2d 501, 447 N.Y.S.2d 573 (1st Dep't 1981), *order aff'd*, 56 N.Y.2d 973, 453 N.Y.S.2d 625, 439 N.E.2d 341 (1982).

7

Denial of interest in life insurance policy

Where, while the insured and his first wife were citizens of the forum state, the wife secured a divorce by its decree which did not refer to policies on the insured's life, contacts with the foreign state were sufficient so that due process was not offended by application of its law, under which the divorced wife had no interest in the policies though she continued to be designated as beneficiary, to group policies which were issued in the other state to the insured's employer and which provided that they were to be governed by the law of the other state.

U.S.—*Travelers Ins. Co. v. Fields*, 451 F.2d 1292, 58 Ohio Op. 2d 181 (6th Cir. 1971).

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16D C.J.S. Constitutional Law § 1912

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

a. Overview; Due Process Within Civil Proceedings

§ 1912. Access to courts

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3953, 3954, 3957 to 3960, 4827

The right of access to the courts is protected by the Due Process Clause of the Fourteenth Amendment.

The right of access to the courts is protected by the Due Process Clauses of the Fifth and Fourteenth Amendments¹ and assures that no person will be denied an opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights.² The ability to seek redress in the courts is a fundamental right under the Fourteenth Amendment, and restrictions on such a right require close scrutiny by the judiciary.³ These due process guarantees require that the courts shall be open to every person with a right to a remedy for injury to his person, property, or reputation, with the opportunity for such remedy being granted at a meaningful time and in a meaningful manner.⁴

A person may not be deprived of the right of access to the courts unless the balance of the state and private interests favors the government,⁵ and the opportunity to communicate privately with an attorney is an important part of the right of access to the courts.⁶

Due process requires no more than reasonable access to the courts.⁷ Access for all individuals to the courts is not a right that is, in all circumstances, guaranteed by the Due Process Clause so that its exercise may not be placed beyond the reach of any individual.⁸ As a constitutional matter, when a right is not fundamental, access to the courts may be restricted,⁹ and there is no constitutional obligation to completely neutralize the economic disparities which inevitably make resort to the courts different for some plaintiffs than others.¹⁰ A party is not deprived of due process simply because it has no federal cause of action and is relegated to state courts for redress¹¹ or because it must seek administrative relief before it has access to the courts.¹²

While due process does not permit the State to preempt the right to dissolve a marriage without affording access to the courts to do so,¹³ a delay in such access resulting from a statutory durational residency requirement does not constitute a denial of due process.¹⁴

The right of a citizen to defend his or her property against attack in court is a corollary to the plaintiff's right to sue there.¹⁵

Compromise and settlement.

Settlements that are forced and not agreed to by the parties violate due process.¹⁶ However, parties may waive their due process rights, such as in a consent decree waiving the right to litigate certain issues.¹⁷ The scope of a contractual due process waiver is discerned within four corners of the document, and the waiver must be construed as it is written.¹⁸ If the due process right of notice and an opportunity to be heard are to be waived by consent, the waiver must be voluntary, clear, and decisive and imply an election to forego some advantage which the waiving party might have insisted on enforcing.¹⁹

CUMULATIVE SUPPLEMENT

Cases:

State constitutional provision requiring open courts is a due-process guarantee that a person bringing a well-established common-law cause of action will not arbitrarily or unreasonably be denied access to the courts. [Tex. Const. art. 1, § 13. Baumgart v. Archer, 581 S.W.3d 819 \(Tex. App. Houston 1st Dist. 2019\)](#), review denied, (Feb. 14, 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[Chappell v. Rich](#), 340 F.3d 1279 (11th Cir. 2003); [Fisher v. City of Cincinnati](#), 753 F. Supp. 681 (S.D. Ohio 1990).
Student borrowers
Student borrowers had a fundamental, due process right to meaningful access to the courts in order to defend actions brought by a state agency on delinquent or defaulted student loans.
Ill.—[Williams v. Illinois State Scholarship Com'n](#), 139 Ill. 2d 24, 150 Ill. Dec. 578, 563 N.E.2d 465, 64 Ed. Law Rep. 445 (1990).
- 2 U.S.—[Mitchum v. Purvis](#), 650 F.2d 647 (5th Cir. 1981).
- 3 Ohio—[Greer-Burger v. Temesi](#), 116 Ohio St. 3d 324, 2007-Ohio-6442, 879 N.E.2d 174 (2007).

- 4 Coburn v. Auto-Owners Ins. Co., 189 Ohio App. 3d 322, 2010-Ohio-3327, 938 N.E.2d 400 (10th Dist. Franklin County 2010).
- 5 U.S.—Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982); Lane v. Tennessee, 315 F.3d 680, 2003 FED App. 0010A (6th Cir. 2003), *aff'd*, 541 U.S. 509, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004).
- 6 U.S.—Dreher v. Sielaff, 636 F.2d 1141 (7th Cir. 1980).
- 7 U.S.—Nwaokocha v. Sadowski, 369 F. Supp. 2d 362 (E.D. N.Y. 2005).
- 8 U.S.—Boddie v. Connecticut, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971).
- 9 U.S.—Seoane v. Ortho Pharmaceuticals, Inc., 660 F.2d 146 (5th Cir. 1981).
- 10 N.J.—Suchit v. Baxt, 176 N.J. Super. 407, 423 A.2d 670 (Law Div. 1980).
- 11 U.S.—West Penn Power Co. v. Train, 522 F.2d 302 (3d Cir. 1975).
- 12 U.S.—West Penn Power Co. v. Train, 522 F.2d 302 (3d Cir. 1975).
- 13 U.S.—Boddie v. Connecticut, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971).
- 14 U.S.—Sosna v. Iowa, 419 U.S. 393, 95 S. Ct. 553, 42 L. Ed. 2d 532, 19 Fed. R. Serv. 2d 925 (1975).
Minn.—Davis v. Davis, 297 Minn. 187, 210 N.W.2d 221 (1973).
Pa.—Stottlemeyer v. Stottlemeyer, 458 Pa. 503, 329 A.2d 892 (1974).
- 15 U.S.—Degen v. U.S., 517 U.S. 820, 116 S. Ct. 1777, 135 L. Ed. 2d 102 (1996).
- 16 Fla.—State Dept. of Transp. v. Plunske, 267 So. 2d 337 (Fla. 4th DCA 1972).
- 17 Ala.—Austin v. Alabama Check Cashers Ass'n, 936 So. 2d 1014 (Ala. 2005).
- 18 Ala.—Austin v. Alabama Check Cashers Ass'n, 936 So. 2d 1014 (Ala. 2005).
- 19 N.J.—Midland Funding, L.L.C. v. Giambanco, 422 N.J. Super. 301, 28 A.3d 831 (App. Div. 2011).

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

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§ 1913. Access to courts—Prisoners

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West's Key Number Digest

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Prisoners maintain a due process right to reasonable access to the courts.

Although prisoners have diminished constitutional protections, they maintain a due process right to reasonable access to the courts.¹ To show a violation of the right of access to the courts, a prisoner must prove that prison officials failed to assist the prisoner in preparing and filing legal papers, and some detriment caused by the officials' failure.² Prisoners have an affirmative right to the tools necessary to challenge their sentences or conditions of confinement under the Fourteenth Amendment's right to substantive due process and access to the courts.³ The right to litigation assistance, however, is limited to the tools prisoners need to attack their sentences, either directly or collaterally, and in order to challenge the conditions of their confinement.⁴ Evidence of detriment must establish specific harm, such as missed court dates, inability to file in a timely manner, denial of legal assistance, or loss of a case that could have been won.⁵

Interference with legal mail implicates a prison inmate's rights to access to the courts.⁶ In order to prevail on a claim of interference with legal mail, an inmate must show that a pending or anticipated legal action was prejudiced by the alleged interference.⁷ However, an isolated incidence of interference with a prisoner's mail usually does not give rise to a cognizable due process claim.⁸

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Footnotes

- 1 Kan.—[Smith v. McKune](#), 31 Kan. App. 2d 984, 76 P.3d 1060 (2003).
Neb.—[Conn v. Conn](#), 13 Neb. App. 472, 695 N.W.2d 674 (2005).
N.D.—[St. Claire v. St. Claire](#), 2004 ND 39, 675 N.W.2d 175 (N.D. 2004).
Tenn.—[Clifton v. Carpenter](#), 775 F.3d 760 (6th Cir. 2014).
- 2 Ill.—[Hadley v. Snyder](#), 335 Ill. App. 3d 347, 269 Ill. Dec. 131, 780 N.E.2d 316 (3d Dist. 2002), as modified on denial of reh'g, (Nov. 27, 2002).
- 3 U.S.—[Silva v. Di Vittorio](#), 658 F.3d 1090 (9th Cir. 2011).
- 4 U.S.—[Silva v. Di Vittorio](#), 658 F.3d 1090 (9th Cir. 2011).
- 5 Ill.—[Hadley v. Snyder](#), 335 Ill. App. 3d 347, 269 Ill. Dec. 131, 780 N.E.2d 316 (3d Dist. 2002), as modified on denial of reh'g, (Nov. 27, 2002).
Requiring payment from indigent inmate
District clerk's refusal of indigent inmate's request for information concerning costs of preparation of transcript of his case for his use in preparing application for writ of habeas corpus unconstitutionally infringed upon inmate's due process right of access to courts where inmate was not entitled to appointed counsel to assist in preparation of his initial habeas petition, and denial of request thus cut off inmate's ability to prepare and present complete application for writ of habeas corpus that included all possible grounds for relief.
Tex.—[In re Bonilla](#), 424 S.W.3d 528 (Tex. Crim. App. 2014).
- 6 U.S.—[Davis v. Goord](#), 320 F.3d 346 (2d Cir. 2003).
- 7 U.S.—[Govan v. Campbell](#), 289 F. Supp. 2d 289 (N.D. N.Y. 2003).
- 8 U.S.—[Tafari v. McCarthy](#), 714 F. Supp. 2d 317 (N.D. N.Y. 2010); [Govan v. Campbell](#), 289 F. Supp. 2d 289 (N.D. N.Y. 2003).

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16D C.J.S. Constitutional Law § 1914

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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§ 1914. Statutory provisions

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West's Key Number Digest

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The validity of various statutes affecting civil remedies has been adjudicated.

Various particular statutes affecting civil remedies have been adjudicated invalid as denying due process as applied,¹ such as statutes authorizing deprivation of property without a prior hearing before chattels are taken from their possessor.²

On the other hand, various other particular statutes affecting civil remedies have been upheld as against the contention of a violation of due process of law.³ This includes statutes permitting a municipality to adopt a policy whereby it will defend specified actions brought against employees arising out of the performance of their duties,⁴ making records and proceedings of hospital medical review committees privileged and nondiscoverable,⁵ and statutes relating to divorce.⁶

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Footnotes

- 1 Mont.—[Application of O'Sullivan](#), 117 Mont. 295, 158 P.2d 306, 161 A.L.R. 487 (1945).
Tex.—[Sellers v. Harris County](#), 483 S.W.2d 242 (Tex. 1972).
Detinue
A detinue statute unconstitutionally contravenes the Fourteenth Amendment since it allows a person to be deprived of property without due process of law.
U.S.—[Anderson v. Barnett First Nat. Bank of Jacksonville](#), 60 F.R.D. 104 (M.D. Ala. 1973).
- 2 U.S.—[Mitchell v. State of Tenn.](#), 351 F. Supp. 846 (W.D. Tenn. 1972).
Fla.—[McMurray v. Fason](#), 584 So. 2d 1027 (Fla. 1st DCA 1991).
Miss.—[Underwood v. Foremost Financial Services Corp.](#), 563 So. 2d 1387 (Miss. 1990).
- 3 U.S.—[Arizona Copper Co. v. Hammer](#), 250 U.S. 400, 39 S. Ct. 553, 63 L. Ed. 1058, 6 A.L.R. 1537 (1919).
Me.—[Portland Pipe Line Corp. v. Environmental Imp. Com'n](#), 307 A.2d 1 (Me. 1973).
Tenn.—[State ex rel. Shriver v. Leech](#), 612 S.W.2d 454 (Tenn. 1981).
Statutory prohibition against self-representation of corporations
Wis.—[Jadair Inc. v. U.S. Fire Ins. Co.](#), 209 Wis. 2d 187, 562 N.W.2d 401 (1997).
Discovery rules may violate due process if improperly applied'
Due process bars merits-preclusive civil procedure rule sanctions, including the improper use of depositions, interrogatories, requests for production, and requests for disclosure.
Tex.—[Wheeler v. Green](#), 157 S.W.3d 439 (Tex. 2005).
- 4 Ga.—[Horn v. City of Atlanta](#), 236 Ga. 247, 223 S.E.2d 647 (1976).
- 5 Ga.—[Eubanks v. Ferrier](#), 245 Ga. 763, 267 S.E.2d 230 (1980).
- 6 Ala.—[Barrington v. Barrington](#), 206 Ala. 192, 89 So. 512, 17 A.L.R. 789 (1921).
Ga.—[Dickson v. Dickson](#), 238 Ga. 672, 235 S.E.2d 479 (1977).
Neb.—[Roberts v. Roberts](#), 200 Neb. 256, 263 N.W.2d 449 (1978).
Durational residency requirements
N.Y.—[Sternshuss v. Sternshuss](#), 71 Misc. 2d 552, 336 N.Y.S.2d 586 (Sup 1972).
Tex.—[LeFebvre v. LeFebvre](#), 510 S.W.2d 29 (Tex. Civ. App. Beaumont 1974).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

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§ 1915. Withdrawal or change of remedy

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West's Key Number Digest

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Although there is no vested interest in retaining a specific law or remedy, due process is implicated if a vested and accrued remedy is withdrawn, impairing substantial rights.

The protection of the Due Process Clause applies to rights which have accrued to one under existing rules of law and have become vested, and such rights cannot be taken away by a change in the rules or remedies.¹ Arbitrary and unreasonable abolishment of a right of action to redress injury to the essential rights of person or property falls within the prohibition of the Due Process Clause,² and the legislature may not abolish a remedy given by the common law to essential rights without affording another remedy substantially adequate.³

A right of action to force indemnification for wrongs done to person or property is "property" within the meaning of the constitution which the legislature may not annul or destroy without due process.⁴ However, one has no property right in a rule of law as such and will not be heard to complain of lack of due process if the rule is changed before any vested rights have

accrued thereunder.⁵ While a vested cause of action is property, one has no property right, in the constitutional sense, in any particular form of remedy, and the protection of the Due Process Clause is restricted to the preservation of a substantial right to redress by some effective procedure.⁶

The guarantees of due process do not forbid the creation of a new cause of action or the abolition of old ones to obtain permissible legislative objectives.⁷ While rights of property which have been created by the common law cannot be taken away without due process, the law itself, as a rule of conduct, may be changed by the legislature within constitutional limits, and no one has a vested interest in any rule of the common law.⁸ Thus, the State may change methods of procedure,⁹ as by giving a new and additional remedy for a right already in existence,¹⁰ or substituting one remedy for another,¹¹ and this it may do by legislation or by court rules.¹² However, due process forbids the immediate withdrawal of all legal means of enforcing a right since that would amount to withdrawal of the right itself.¹³

The State may prescribe conditions on which actions may be brought on causes of action thereafter arising,¹⁴ subject, however, to the limitation that it may not impose conditions so unreasonable as practically to deny a person the right to sue on a cause of action existing at common law.¹⁵ Where the remedy for a wrong is in no respect destroyed or made ineffectual, the fact that a statute narrows the remedy does not render the statute unconstitutional.¹⁶ A state's withdrawal of its consent to be sued does not ordinarily constitute a denial of due process of law.¹⁷

Under the foregoing general rules as applied to the circumstances disclosed in particular cases, the withdrawal or change of remedies as to particular matters has been held valid¹⁸ as in the case of remedies as to labor relations¹⁹ and the marriage status.²⁰

On the other hand, where the circumstances involved reveal a violation of the general rules above set forth, the withdrawal or change of a remedy constitutes a denial of due process²¹ as with respect to such withdrawal or change as to matters concerning banks and banking,²² corporations,²³ and usury.²⁴

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Footnotes

- 1 U.S.—*Coombes v. Getz*, 285 U.S. 434, 52 S. Ct. 435, 76 L. Ed. 866 (1932).
La.—*Reichenphader v. Allstate Ins. Co.*, 402 So. 2d 311 (La. Ct. App. 4th Cir. 1981), writ granted, 404 So. 2d 1261 (La. 1981) and judgment aff'd, 418 So. 2d 648 (La. 1982), overturned due to legislative action in 1987 La. Sess. Law Serv. 124.
N.J.—*Engler v. Capital Management Corp.*, 112 N.J. Super. 445, 271 A.2d 615 (Ch. Div. 1970).
Tenn.—*Morris v. Gross*, 572 S.W.2d 902 (Tenn. 1978).
Opportunity to protect
Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.
U.S.—*Richards v. Jefferson County, Ala.*, 517 U.S. 793, 116 S. Ct. 1761, 135 L. Ed. 2d 76 (1996).
Withdrawal or change of remedy as impairing vested contractual rights, generally, see § 620.
- 2 U.S.—*Truax v. Corrigan*, 257 U.S. 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 A.L.R. 375 (1921); *Barr v. Preskitt*, 389 F. Supp. 496 (M.D. Ala. 1975).
Ky.—*Louisville Shopping Center, Inc. v. City of St. Matthews*, 635 S.W.2d 307 (Ky. 1982).
Tenn.—*Morris v. Gross*, 572 S.W.2d 902 (Tenn. 1978).
Wis.—*Hunter v. School Dist. of Gale-Ettrick-Trempealeau*, 90 Wis. 2d 523, 280 N.W.2d 313 (Ct. App. 1979), decision aff'd, 97 Wis. 2d 435, 293 N.W.2d 515 (1980).
- 3 Tex.—*Texas Architectural Aggregate, Inc. v. Adams*, 690 S.W.2d 640 (Tex. App. Austin 1985).

- 4 La.—*State ex rel. Muslow v. Louisiana Oil Refining Corp.*, 176 So. 686 (La. Ct. App. 2d Cir. 1937), judgment
aff'd, 304 U.S. 197, 58 S. Ct. 832, 82 L. Ed. 1287 (1938).
 - 5 U.S.—*Truax v. Corrigan*, 257 U.S. 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 A.L.R. 375 (1921).
Cal.—*Werner v. Southern Cal. Associated Newspapers*, 35 Cal. 2d 121, 216 P.2d 825, 13 A.L.R.2d 252
(1950).
 - 6 U.S.—*Gibbes v. Zimmerman*, 290 U.S. 326, 54 S. Ct. 140, 78 L. Ed. 342 (1933).
Ark.—*Forrest City Mach. Works, Inc. v. Aderhold*, 273 Ark. 33, 616 S.W.2d 720 (1981).
 - 7 U.S.—*Security Homestead Ass'n v. W.R. Grace & Co.*, 743 F. Supp. 456 (E.D. La. 1990).
 - 8 U.S.—*Mondou v. New York, N.H. & H.R. Co.*, 223 U.S. 1, 32 S. Ct. 169, 56 L. Ed. 327 (1912); *Western
Union Telegraph Co. v. Commercial Milling Co.*, 218 U.S. 406, 31 S. Ct. 59, 54 L. Ed. 1088 (1910); *Martin
v. Pittsburg & L.E.R. Co.*, 203 U.S. 284, 27 S. Ct. 100, 51 L. Ed. 184 (1906).
- Statutes of repose**
Legislatures do not violate federal due process rights by creating statutes of repose that prevent causes of
action from accruing.
- U.S.—*Carr v. Beech Aircraft Corp.*, 758 F. Supp. 1330 (D. Ariz. 1991).
 - 9 Ariz.—*Ray v. Rambaud*, 103 Ariz. 186, 438 P.2d 752 (1968).
Ind.—*DeHart v. Anderson*, 178 Ind. App. 581, 383 N.E.2d 431 (1978).
Wash.—*West v. Zeibell*, 87 Wash. 2d 198, 550 P.2d 522 (1976).
 - 10 Colo.—*Alpha Corporation v. Denver-Greeley Valley Irr. Dist.*, 110 Colo. 179, 132 P.2d 448 (1942).
Mo.—*In re Sparrow*, 338 Mo. 203, 90 S.W.2d 401 (1935).
 - 11 U.S.—*Hardware Dealers' Mut. Fire Ins. Co. of Wis. v. Glidden Co.*, 284 U.S. 151, 52 S. Ct. 69, 76 L. Ed.
214 (1931).
Kan.—*Injured Workers of Kansas v. Franklin*, 262 Kan. 840, 942 P.2d 591 (1997).
 - 12 U.S.—*Swanson v. Bates*, 170 F.2d 648 (10th Cir. 1948).
Mo.—*In re Sparrow*, 338 Mo. 203, 90 S.W.2d 401 (1935).
 - 13 Ind.—*DeHart v. Anderson*, 178 Ind. App. 581, 383 N.E.2d 431 (1978).
 - 14 Cal.—*Sherer v. City of Laguna Beach*, 13 Cal. App. 2d 396, 57 P.2d 157 (4th Dist. 1936).
W. Va.—*White v. City of Charleston*, 98 W. Va. 143, 126 S.E. 705 (1925).
 - 15 W. Va.—*White v. City of Charleston*, 98 W. Va. 143, 126 S.E. 705 (1925).
 - 16 N.Y.—*Hein v. Davidson*, 96 N.Y. 175, 67 How. Pr. 148, 1884 WL 12350 (1884).
 - 17 U.S.—*Hospital Ass'n of New York State v. Toia*, 435 F. Supp. 819 (S.D. N.Y. 1977).
 - 18 **Bankruptcy**
U.S.—*In re Landquist*, 70 F.2d 929 (C.C.A. 7th Cir. 1934).
- Banks and banking**
U.S.—*Department of Financial Institutions of Indiana v. Mercantile-Commerce Bank & Trust Co.*, 92 F.2d
639 (C.C.A. 7th Cir. 1937).- 19 U.S.—*Carras v. Monaghan*, 65 F. Supp. 658 (W.D. Pa. 1946).
Ill.—*Fenske Bros. v. Upholsterers' International Union of North America, Local No. 18*, 358 Ill. 239, 193
N.E. 112, 97 A.L.R. 1318 (1934).
N.Y.—*May's Furs and Ready to Wear v. Bauer*, 282 N.Y. 331, 26 N.E.2d 279 (1940).
- 20 U.S.—*Makres v. Askew*, 500 F.2d 577 (5th Cir. 1974).
Cal.—*In re Marriage of Walton*, 28 Cal. App. 3d 108, 104 Cal. Rptr. 472 (4th Dist. 1972).
N.J.—*Chalmers v. Chalmers*, 65 N.J. 186, 320 A.2d 478 (1974).
N.Y.—*Gleason v. Gleason*, 26 N.Y.2d 28, 308 N.Y.S.2d 347, 256 N.E.2d 513 (1970).
- 21 **Abolition of courts**
Pa.—*Com. ex rel. Kelley v. Brown*, 327 Pa. 136, 193 A. 258 (1937).
- 22 Ala.—*Blythe v. Enslen*, 219 Ala. 638, 123 So. 71 (1929).
- 23 U.S.—*Terral v. Burke Const. Co.*, 257 U.S. 529, 42 S. Ct. 188, 66 L. Ed. 352, 21 A.L.R. 186 (1922).
- 24 U.S.—*Brierley v. Commercial Credit Co.*, 43 F.2d 724 (E.D. Pa. 1929), aff'd, 43 F.2d 730 (C.C.A. 3d Cir.
1930).

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Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

a. Overview; Due Process Within Civil Proceedings

§ 1916. Limitation of remedy

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West's Key Number Digest

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While limitations must comply with the requirements of due process of law, statutes of limitation do not necessarily operate as a denial of due process.

The Due Process Clause imposes procedural limitations on a state's power to take away protected entitlements.¹ Limitations must comply with the requirements of due process of law,² and whether a time limit is so short that it deprives litigants of a meaningful opportunity to be heard is a due process question.³ A statute of limitations which attempts to bar a debt or other claim without giving a reasonable time within which the right may be preserved is violative of the Due Process Clause.⁴ Nevertheless, statutes of limitation do not necessarily operate as a denial of due process⁵ even though enacted subsequently to the arising of the claim.⁶ Nor does a decision barring relief for failure to sue within the prescriptive period violate due process requirements.⁷

The relevant test of due process with respect to statutes of limitations is basically the test of reasonableness.⁸ Statutes of limitations are favorites of the law and will not be held unconstitutional as denying due process unless the time allowed for

commencement of the action and the date fixed when the statute commences to run are clearly and plainly unreasonable.⁹ Limitations work a denial of due process only when so short as to deny an effective remedy.¹⁰ The plaintiff bears the burden of proving a limitations provision to be wholly arbitrary.¹¹ Nevertheless, due process may require the tolling of an applicable statute of limitations, considering the governmental interests involved and the private interests affected by the official action.¹²

The legislature has broad latitude to set limitations periods under the Due Process Clause.¹³ The legislature, without violation of the guaranties of due process of law, may extend the period of limitations¹⁴ and may make such extension applicable to causes of action which have already accrued.¹⁵ In like manner, it may reduce the period¹⁶ and may make such reduction applicable to existing causes of action,¹⁷ subject, however, to the conditions that it may not entirely take away the right to sue¹⁸ or so unreasonably shorten the period as practically to take away all remedy.¹⁹

In determining what constitutes a reasonable time, the period which elapses between the enactment of the statute and its taking effect is to be taken into consideration.²⁰ Although the effect of a statute of limitation in connection with the adverse possession of property may be to take the title out of one person and vest it in another, it does not, for this reason, constitute a taking without due process of law.²¹ The question of whether or not a statute of limitations violates due process is not dependent on the nature of the claim the party can assert since the defects can be mere irregularities or informalities, or the defects can be jurisdictional.²² The legislature can, by a statute of limitations, bar the right to assert a jurisdictional defect by one who is not in possession of the realty involved.²³

The legislature may not, however, under the guise of a statute of limitation, deprive any person of vested rights,²⁴ nor may it require a person having title and possession to take the initiative in court proceedings under penalty of being deprived of his or her property rights.²⁵

The application of state statutes of limitations to federal causes of action does not violate due process.²⁶ Due process does not require that potential plaintiffs be given notice of the impending expiration of a period of limitations.²⁷

Persons under disabilities.

Although statutes of limitation usually contain certain exceptions in favor of persons under disabilities, they may, without violation of the guaranties of due process, be made to apply to such persons as, for example, to infants²⁸ and to mental incompetents.²⁹

Actions on contract.

Statutes attempting to impose limitations of the forum on contracts executed and performable elsewhere have been held invalid as a denial of due process.³⁰

Actions arising out of improvements to real property.

A statute prohibiting an action against persons furnishing the design or construction of improvements to real property more than a prescribed period after the completion of any such improvement does not deny due process.³¹ However, a plaintiff whose right of action vests shortly before expiration of the statutory period may be denied due process if he or she is denied a reasonable time within which to bring a suit.³²

CUMULATIVE SUPPLEMENT

Cases:

A limitations period is only considered too short, so as to violate a litigant's due process rights, if the time allowed to file a claim is manifestly so insufficient that the statute becomes a denial of justice; such a standard can be applied only in the context of a concrete claim. [U.S.C.A. Const.Amend. 5. New York Republican State Committee v. S.E.C., 799 F.3d 1126 \(D.C. Cir. 2015\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S.—District Attorney's Office for Third Judicial Dist. v. Osborne, 557 U.S. 52, 129 S. Ct. 2308, 174 L. Ed. 2d 38 \(2009\).](#)
- 2 [Cal.—California Employment Stabilization Commission v. Payne, 31 Cal. 2d 210, 187 P.2d 702 \(1947\).](#)
[Pa.—Philadelphia, B. & W. R. Co. to Use of Pennsylvania R. Co. v. Quaker City Flour Mills Co., 282 Pa. 362, 127 A. 845 \(1925\).](#)
[S.C.—U.S. Rubber Co. v. McManus, 211 S.C. 342, 45 S.E.2d 335 \(1947\).](#)
- 3 [U.S.—Miller v. French, 530 U.S. 327, 120 S. Ct. 2246, 147 L. Ed. 2d 326 \(2000\).](#)
- 4 [Cal.—California Employment Stabilization Commission v. Payne, 31 Cal. 2d 210, 187 P.2d 702 \(1947\).](#)
[Miss.—Bell v. Union & Planters' Bank & Trust Co., 158 Miss. 486, 130 So. 486 \(1930\).](#)
[S.C.—U.S. Rubber Co. v. McManus, 211 S.C. 342, 45 S.E.2d 335 \(1947\).](#)
- 5 [U.S.—Atchafalaya Land Co. v. F.B. Williams Cypress Co., 258 U.S. 190, 42 S. Ct. 284, 66 L. Ed. 559 \(1922\).](#)
[Colo.—In re Estate of Ongaro, 998 P.2d 1097 \(Colo. 2000\).](#)
Multistate action
The State of Kansas did not violate due process when it applied its own statute of limitations in a multistate class action suit.
[U.S.—Sun Oil Co. v. Wortman, 486 U.S. 717, 108 S. Ct. 2117, 100 L. Ed. 2d 743 \(1988\).](#)
- 6 [U.S.—Jenkins v. U.S., 86 F.2d 123 \(C.C.A. 5th Cir. 1936\).](#)
[N.C.—Sheets v. Walsh, 217 N.C. 32, 6 S.E.2d 817 \(1940\).](#)
[Wash.—Mattson v. Department of Labor and Industries, 176 Wash. 345, 29 P.2d 675 \(1934\), aff'd, 293 U.S. 151, 55 S. Ct. 14, 79 L. Ed. 251 \(1934\).](#)
- 7 [N.Y.—Mores v. Feel, 73 Misc. 2d 942, 343 N.Y.S.2d 220 \(Fam. Ct. 1973\).](#)
- 8 [U.S.—Native American Mohegans v. U.S., 184 F. Supp. 2d 198 \(D. Conn. 2002\).](#)
[Tenn.—Mills v. Wong, 155 S.W.3d 916 \(Tenn. 2005\).](#)
[Wis.—Boldt v. State, 101 Wis. 2d 566, 305 N.W.2d 133 \(1981\).](#)
- 9 [Mo.—W.B. v. M.G.R., 955 S.W.2d 935 \(Mo. 1997\).](#)
Medical malpractice
(1) Measuring the accrual of a medical malpractice action from the date of the occurrence, act, or failure, rather than from when the patient became aware of the medical condition, does not violate due process.
[N.Y.—Young v. Community Health Plan, 287 A.D.2d 914, 731 N.Y.S.2d 562 \(3d Dep't 2001\).](#)
(2) The fact that interests of minors were at stake, in a statute of repose generally requiring that a medical malpractice action on behalf of a minor be brought within seven years of the injury-causing act or omission, did not require a heightened level of scrutiny in a due process challenge to that statute.
[Mass.—Harlfinger v. Martin, 435 Mass. 38, 754 N.E.2d 63 \(2001\).](#)
(3) A one-year medical malpractice statute of limitations did not violate the patient's due process rights; the limitation period was rationally related to a legislative purpose which was to lessen the number of medical malpractice claims and thereby lessen the costs to health care providers.

- Ohio—Grubb v. Columbus Community Hosp., 117 Ohio App. 3d 670, 691 N.E.2d 333 (10th Dist. Franklin County 1997).
- 10 Ariz.—Crawford v. Hunt, 41 Ariz. 229, 17 P.2d 802 (1932).
- Colo.—Mishek v. Stanton, 200 Colo. 514, 616 P.2d 135 (1980).
- Ill.—Masin v. Bassford, 381 Ill. 569, 46 N.E.2d 366 (1943).
- N.C.—Sheets v. Walsh, 217 N.C. 32, 6 S.E.2d 817 (1940).
- 11 U.S.—Blackmon v. American Home Products Corp., 328 F. Supp. 2d 647 (S.D. Tex. 2004).
- 12 Tenn.—Workman v. State, 41 S.W.3d 100 (Tenn. 2001).
- 13 Utah—Lee v. Gaufin, 867 P.2d 572 (Utah 1993).
- 14 U.S.—Wright v. Union Central Life Ins. Co., 304 U.S. 502, 58 S. Ct. 1025, 82 L. Ed. 1490 (1938); Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934).
- Wis.—Ortman v. Jensen & Johnson, Inc., 66 Wis. 2d 508, 225 N.W.2d 635 (1975).
- 15 U.S.—Lakewood Engineering Co. v. New York Cent. R. Co., 2 F.2d 121 (N.D. Ohio 1924).
- N.Y.—Gallewski v. H. Hentz & Co., 301 N.Y. 164, 93 N.E.2d 620 (1950).
- 16 U.S.—U.S. v. Mitchell, 86 F. Supp. 453 (W.D. Mo. 1949).
- Del.—Cranston v. New Process Fibre Co., 45 Del. 368, 74 A.2d 818 (Super. Ct. 1950).
- S.C.—U.S. Rubber Co. v. McManus, 211 S.C. 342, 45 S.E.2d 335 (1947).
- 17 Ark.—Steele v. Gann, 197 Ark. 480, 123 S.W.2d 520, 120 A.L.R. 754 (1939).
- S.C.—U.S. Rubber Co. v. McManus, 211 S.C. 342, 45 S.E.2d 335 (1947).
- 18 Neb.—Kratovich v. Motor Club Ins. Ass'n, 255 Neb. 977, 588 N.W.2d 565 (1999).
- 19 Mich.—Bissell v. Kommareddi, 202 Mich. App. 578, 509 N.W.2d 542 (1993).
- N.M.—Jaramillo v. Heaton, 136 N.M. 498, 2004-NMCA-123, 100 P.3d 204 (Ct. App. 2004).
- 20 Cal.—California Employment Stabilization Commission v. Payne, 31 Cal. 2d 210, 187 P.2d 702 (1947).
- Iowa—Collier v. Smaltz, 149 Iowa 230, 128 N.W. 396 (1910).
- 21 Ind.—Short v. Texaco, Inc., 273 Ind. 518, 406 N.E.2d 625 (1980), judgment aff'd, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982).
- Neb.—Linton v. Heye, 69 Neb. 450, 95 N.W. 1040 (1903), aff'd, 194 U.S. 628, 24 S. Ct. 856, 48 L. Ed. 1157 (1904).
- Okla.—Williams v. Bailey, 1954 OK 19, 268 P.2d 868 (Okla. 1954).
- 22 Iowa—Swanson v. Pontralo, 238 Iowa 693, 27 N.W.2d 21 (1947).
- 23 Iowa—Swanson v. Pontralo, 238 Iowa 693, 27 N.W.2d 21 (1947).
- N.Y.—Dunkum v. Maceck Bldg. Corporation, 256 N.Y. 275, 176 N.E. 392 (1931).
- 24 Kan.—Shirley v. Reif, 260 Kan. 514, 920 P.2d 405 (1996).
- N.J.—State by Parsons v. Standard Oil Co., 5 N.J. 281, 74 A.2d 565 (1950), judgment aff'd, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).
- Okla.—Williams v. Bailey, 1954 OK 19, 268 P.2d 868 (Okla. 1954).
- 25 Kan.—Murrison v. Fenstermacher, 166 Kan. 568, 203 P.2d 160, 7 A.L.R.2d 1360 (1949).
- Okla.—Williams v. Bailey, 1954 OK 19, 268 P.2d 868 (Okla. 1954).
- Pa.—Girard Trust Co. v. Pennsylvania R. Co., 364 Pa. 576, 73 A.2d 371 (1950).
- 26 **Civil rights action**
- U.S.—Johnson v. Railway Exp. Agency, Inc., 489 F.2d 525 (6th Cir. 1973), judgment aff'd, 421 U.S. 454, 95 S. Ct. 1716, 44 L. Ed. 2d 295 (1975).
- 27 U.S.—Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988).
- 28 U.S.—Wilson ex rel. Wilson v. Gunn, 403 F.3d 524 (8th Cir. 2005).
- Cal.—Carr v. State of California, 58 Cal. App. 3d 139, 129 Cal. Rptr. 730 (1st Dist. 1976).
- La.—Doyle v. Negrotto, 124 La. 100, 49 So. 992 (1909).
- Limitations as applied to infants**
- Infant patient's due process right to sue under the Federal Tort Claims Act (FTCA) for medical malpractice was not violated by a finding that patient's claim accrued when her mother knew of patient's injuries and the cause of the injuries and still had time to pursue child's administrative claim.
- U.S.—Wilson ex rel. Wilson v. Gunn, 403 F.3d 524 (8th Cir. 2005).
- 29 Ill.—Masin v. Bassford, 381 Ill. 569, 46 N.E.2d 366 (1943).

Iowa—[Collier v. Smaltz](#), 149 Iowa 230, 128 N.W. 396 (1910).

Mo.—[Faris v. Moore](#), 256 Mo. 123, 165 S.W. 311 (1914).

Tolling of statute not required

Due process did not require the tolling of a medical malpractice statute of repose during the period of a patient's mental incompetency; the legislature had the power to place reasonable limitations on rights of action in tort, and the case law that tolled the limitations period for the filing of postconviction relief petitions for mentally incompetent defendants did not apply to the patient since the postconviction relief procedure was only available to a defendant in custody.

Tenn.—[Mills v. Wong](#), 155 S.W.3d 916 (Tenn. 2005).

30 U.S.—[Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.](#), 292 U.S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A.L.R. 928 (1934).

Miss.—[Protective Life Ins. Co. v. Lamarque](#), 180 Miss. 243, 177 So. 15 (1937).

31 U.S.—[Adair v. Koppers Co., Inc.](#), 541 F. Supp. 1120 (N.D. Ohio 1982), judgment aff'd, 741 F.2d 111 (6th Cir. 1984).

32 **Unreasonable time**

A statute prohibiting the bringing of an action for wrongful death arising out of defective or unsafe condition of improvement to real property against an engineer or contractor after 10 years from the date of substantial completion denied due process to personal representatives of the estates of decedents killed in a one-car accident on a curve built as part of a highway project where the cause of action arose approximately three months before expiration of the 10-year period since three months was not a reasonable time for institution of the action.

N.M.—[Terry v. New Mexico State Highway Com'n](#), 1982-NMSC-047, 98 N.M. 119, 645 P.2d 1375 (1982).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

a. Overview; Due Process Within Civil Proceedings

§ 1917. Limitation of remedy—Removal of statutory bar

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The removal of a statutory bar which has once attached is held by some authorities to be contrary to due process of law while other authorities hold that due process does not forbid such removal.

The removal of a statutory bar which has once attached is held by some authorities to be contrary to due process of law¹ while other authorities hold that due process does not forbid such removal where no property rights have attached and that the removal operates simply to take away the defense of the statute to a valid claim.² Thus, where a claim barred by the statute of limitations is otherwise valid, the legislature may remove the bar of the statute.³ However, a title to real estate acquired by adverse possession cannot be disturbed by a legislative removal of the bar of the statute,⁴ and where a right of action for the recovery of real property has become barred by limitations, a later act attempting to repeal or remove such bar after it has become complete constitutes a deprivation of property without due process of law.⁵

Where a specific statute of limitations in effect lifts the bar of a general statute, litigants are not denied due process because they had no opportunity to submit to the court testimony of legislators as to the legislative intent.⁶

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Footnotes

- 1 U.S.—*Valleytown Tp. v. Women's Catholic Order of Foresters*, 115 F.2d 459 (C.C.A. 4th Cir. 1940).
Kan.—*Siefkin v. Siefkin*, 150 Kan. 396, 92 P.2d 1005 (1939).
- 2 U.S.—*Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 65 S. Ct. 1137, 89 L. Ed. 1628 (1945); *Starks v. S. E. Rykoff Co.*, 673 F.2d 1106 (9th Cir. 1982).
Haw.—*Roe v. Doe*, 59 Haw. 259, 581 P.2d 310 (1978).
N.J.—*State by Parsons v. Standard Oil Co.*, 5 N.J. 281, 74 A.2d 565 (1950), judgment aff'd, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).
N.Y.—*Gallewski v. H. Hentz & Co.*, 301 N.Y. 164, 93 N.E.2d 620 (1950).
N.D.—*In Interest of W. M. V.*, 268 N.W.2d 781 (N.D. 1978).
- 3 U.S.—*International Union of Elec., Radio and Mach. Workers, AFL-CIO, Local 790 v. Robbins & Myers, Inc.*, 429 U.S. 229, 97 S. Ct. 441, 50 L. Ed. 2d 427 (1976); *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 65 S. Ct. 1137, 89 L. Ed. 1628 (1945).
Ind.—*Jackson Hill Coal & Coke Co. v. Board of Com'rs of Sullivan County*, 181 Ind. 335, 104 N.E. 497 (1914).
N.Y.—*Gallewski v. H. Hentz & Co.*, 301 N.Y. 164, 93 N.E.2d 620 (1950).
Pa.—*Agostin v. Pittsburgh Steel Foundry Corp.*, 354 Pa. 543, 47 A.2d 680 (1946).
Wash.—*State v. City of Aberdeen*, 34 Wash. 61, 74 P. 1022 (1904).
- 4 § 476.
- 5 U.S.—*Stewart v. Keyes*, 295 U.S. 403, 55 S. Ct. 807, 79 L. Ed. 1507 (1935).
- 6 U.S.—*Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 65 S. Ct. 1137, 89 L. Ed. 1628 (1945).

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§ 1918. Suspension of remedy

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Suspension of remedies for the collection of claims or enforcement of rights may be sustained as not constituting a denial of due process, but an unreasonable suspension of remedy is a violation of the Due Process Clause.

Suspension of remedies for the collection of claims or enforcement of rights may be sustained as not constituting a denial of due process where there exists an emergency requiring such suspension for the welfare of the public and where the statutes enacting such suspension are reasonable in character.¹ Accordingly, suspension of remedies may be sustained in the case of mortgage moratorium acts,² bankruptcy law provisions permitting stays of proceedings,³ statutes suspending liquidation of insolvent banks to permit reorganization by depositors,⁴ or emergency price or rent laws.⁵

However, the right to enforce a legal claim against another constitutes property within the meaning of due process requirements, and an unreasonable suspension of remedy is a violation of the Due Process Clause.⁶

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Footnotes

- 1 U.S.—*Gibbes v. Zimmerman*, 290 U.S. 326, 54 S. Ct. 140, 78 L. Ed. 342 (1933).
- 2 Iowa—*Berg v. Berg*, 221 Iowa 326, 264 N.W. 821 (1936).
La.—*Metropolitan Life Ins. Co. v. Morris*, 181 La. 277, 159 So. 388 (1935).
- 3 U.S.—*Adair v. Bank of America Nat. Trust & Savings Ass'n*, 303 U.S. 350, 58 S. Ct. 594, 82 L. Ed. 889 (1938).
- 4 Ky.—*Milner v. Gibson*, 249 Ky. 594, 61 S.W.2d 273 (1933).
Ohio—*Roberts Development Corp. v. Harris*, 36 Ohio App. 3d 111, 521 N.E.2d 517 (1st Dist. Hamilton County 1987).
- 5 U.S.—*U.S. v. Sosnowitz & Lotstein*, 50 F. Supp. 586 (D. Conn. 1943).
La.—*Wrenn v. Miller*, 161 So. 882 (La. Ct. App. 2d Cir. 1935).
N.Y.—*Dekrone v. Bussitil*, 199 Misc. 70, 102 N.Y.S.2d 291 (Sup 1950).
- 6 U.S.—*Native American Mohegans v. U.S.*, 184 F. Supp. 2d 198 (D. Conn. 2002).
N.Y.—*Slisberg v. New York Life Ins. Co.*, 217 A.D. 67, 216 N.Y.S. 215 (1st Dep't 1926), *aff'd*, 244 N.Y. 482, 155 N.E. 749 (1927) and *aff'd*, 244 N.Y. 599, 155 N.E. 913 (1927).

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16D C.J.S. Constitutional Law § 1919

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

a. Overview; Due Process Within Civil Proceedings

§ 1919. Conditions precedent to actions

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3971

Due process requirements do not preclude a state from prescribing reasonable and appropriate conditions precedent to the bringing of suits of a specified class as long as the basis of distinction is real, and the condition imposed has reasonable relation to a legitimate object.

Due process requirements do not preclude a state from prescribing reasonable and appropriate conditions precedent to the bringing of suits of a specified class as long as the basis of distinction is real, and the condition imposed has reasonable relation to a legitimate object.¹ Courts have upheld the validity under due process requirements of statutes requiring authorization of a designated court or justice thereof as a condition precedent to the bringing of a suit against a municipality for assessment, levy, or collection of taxes.²

Generally, statutes providing for the filing of a notice of a claim for damages, within a designated time, in actions against public entities do not violate due process³ despite some authority to the contrary.⁴ Such provisions cannot be held unconstitutional

merely because they cannot be given universal application.⁵ Also, the state interest in the orderly disposition of decedents' estates justifies the enforcement of generally applicable limitations on the time and manner in which claims may be asserted.⁶ Thus, the courts have upheld statutes providing that unless creditors of decedents' estate file claims within a specified time after notice by publication their claims will be barred.⁷

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Footnotes

- 1 U.S.—*Jones v. Union Guano Co.*, 264 U.S. 171, 44 S. Ct. 280, 68 L. Ed. 623 (1924); *Woods v. Holy Cross Hospital*, 591 F.2d 1164 (5th Cir. 1979).
Domicile
The Due Process Clause does not invalidate a statute requiring that the libelant be domiciled in a state for a particular period preceding the commencement of an action for divorce.
N.H.—*Porter v. Porter*, 112 N.H. 403, 296 A.2d 900 (1972).
- 2 N.J.—*Hourigan v. North Bergen Tp.*, 113 N.J.L. 143, 172 A. 193 (N.J. Ct. Err. & App. 1934).
- 3 Del.—*Sadler v. New Castle County*, 524 A.2d 18 (Del. Super. Ct. 1987), decision aff'd, 565 A.2d 917 (Del. 1989).
Kan.—*Zeferjohn v. Shawnee County Sheriff's Dept.*, 26 Kan. App. 2d 379, 988 P.2d 263 (1999).
Mo.—*Ambers-Phillips v. SSM DePaul Health Center*, 2015 WL 1926012 (Mo. 2015).
N.H.—*Lennartz v. Oak Point Associates, P.A.*, 112 A.3d 1159 (N.H. 2015).
Incapacitated plaintiff
Due process required a minor who was incapacitated in a shooting by a city policeman and was unable to give the city timely notice of a tort claim to be given a reasonable time after his disability was removed to file a notice of claim.
Ind.—*City of Fort Wayne v. Cameron*, 267 Ind. 329, 370 N.E.2d 338 (1977).
- 4 W. Va.—*Anderson v. City of Hinton*, 161 W. Va. 505, 242 S.E.2d 707 (1978).
- 5 Tex.—*City of Waco v. Landingham*, 138 Tex. 156, 157 S.W.2d 631 (1941).
- 6 U.S.—*Reed v. Campbell*, 476 U.S. 852, 106 S. Ct. 2234, 90 L. Ed. 2d 858 (1986).
A.L.R. Library
Validity of nonclaim statute or rule provision for notice by publication to claimants against estate—post-1950 cases, 56 A.L.R.4th 458.
- 7 Colo.—*In re Estate of Ongaro*, 998 P.2d 1097 (Colo. 2000).
Ind.—*Burnett v. Villaneuve*, 685 N.E.2d 1103 (Ind. Ct. App. 1997).

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16D C.J.S. Constitutional Law § 1920

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

b. Special or Summary Proceedings

§ 1920. Applicability of due process to special or summary proceedings, generally

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4085, 4089, 4477, 4480, 4488

It is essential that due process attend all special and summary proceedings of a judicial character.

A remedy otherwise affording due process of law is not rendered invalid by reason of the special or summary character of the proceeding.¹ Summary procedure² without an opportunity to be heard³ may meet the requirements of due process in extraordinary situations. Special or summary proceedings of a character unknown to the common law may nevertheless constitute due process.⁴

It is, however, essential that due process attend all special and summary proceedings of a judicial character,⁵ with notice and hearing where public welfare does not require summary action.⁶ Where a special or summary remedy fails to afford the essential elements of due process of law, it is invalid.⁷ Statutes cannot constitutionally allow one who has only a security interest in goods to take them from the user without abiding by procedural due process.⁸

Whether or not a prior hearing is required to afford due process in a given situation is dependent upon a judicial weighing of the seriousness of the deprivation against the importance of the governmental or public interest served by summary procedure.⁹ A prior hearing may be foregone where the government's interest in a summary adjudication substantially outweighs the extent of the deprivation facing the individual.¹⁰ Where the individual interest is weightier than the governmental interest in summary adjudication, due process is a constitutional requirement.¹¹

Compliance with the rule of due process has been required in various special or summary proceedings,¹² including escheats, which involve reversion of property to the State;¹³ garnishment proceedings;¹⁴ paternity proceedings;¹⁵ guardianship proceedings;¹⁶ modification proceedings;¹⁷ probate proceedings;¹⁸ proceedings to recover possession of real property;¹⁹ quo warranto proceedings;²⁰ attorney licensure and suspension proceedings;²¹ and receivership proceedings.²²

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Footnotes

- 1 N.J.—*State v. American-Hawaiian S.S. Co.*, 29 N.J. Super. 116, 101 A.2d 598 (Ch. Div. 1953).
N.Y.—*Speciner v. Chase Manhattan Bank*, 103 Misc. 2d 19, 425 N.Y.S.2d 242 (Sup 1980).
Pa.—*In re Garrett's Estate*, 372 Pa. 438, 94 A.2d 357 (1953).
- 2 U.S.—*Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 89 S. Ct. 1820, 23 L. Ed. 2d 349 (1969).
Wash.—*Carlstrom v. Hanline*, 98 Wash. App. 780, 990 P.2d 986 (Div. 1 2000).
- 3 Minn.—*Sieber v. Sieber*, 258 N.W.2d 754 (Minn. 1977).
- 4 N.J.—*Beekwilder v. Beekwilder*, 29 N.J. Super. 351, 102 A.2d 642 (App. Div. 1953).
Or.—*In re Idleman's Commitment*, 146 Or. 13, 27 P.2d 305 (1933).
- 5 U.S.—*Bradley v. St. Louis Terminal Warehouse Co.*, 189 F.2d 818 (8th Cir. 1951).
Me.—*Appeal of Sleeper*, 147 Me. 302, 87 A.2d 115 (1952).
Neb.—*Watkins v. Dodson*, 159 Neb. 745, 68 N.W.2d 508 (1955).
Protection order
Wyo.—*Joyner v. State*, 2002 WY 174, 58 P.3d 331 (Wyo. 2002).
Mandamus
A writ of mandamus, whether designated as a legal action or a special proceeding, involves a judicial determination in which due process must be met, including, among other things, proper notice as to time, place, and opportunity to be heard, which, out of necessity, involves venue.
N.D.—*Dorgan v. Mercil*, 269 N.W.2d 99 (N.D. 1978).
Securing attendance of witnesses
Because of the generous protections to be accorded a person brought or summoned before the court of a forwarding state in a proceeding under the uniform law to secure attendance of witnesses from within or without a state in criminal proceedings, procedural due process in the hearing itself must be accorded.
U.S.—*People of State of N. Y. v. O'Neill*, 359 U.S. 1, 79 S. Ct. 564, 3 L. Ed. 2d 585 (1959).
- 6 U.S.—*Coe v. Armour Fertilizer Works*, 237 U.S. 413, 35 S. Ct. 625, 59 L. Ed. 1027 (1915).
Tex.—*Forestier v. San Antonio Sav. Ass'n*, 564 S.W.2d 160 (Tex. Civ. App. El Paso 1978), writ refused n.r.e., (July 26, 1978).
Ex parte order confirming judicial sale
An ex parte order confirming a judicial sale of partnership property did not constitute a taking of property without due process in view of the fact that the order confirming judicial sale had been entered prior to the ex parte order, and notice of the prior order had been properly given.
Ariz.—*Foster v. Ames*, 5 Ariz. App. 1, 422 P.2d 731 (1967).
Uniform Reciprocal Enforcement of Support Act
(1) Application of the Uniform Reciprocal Enforcement of Support Act did not deny a mother from whom support was sought due process even if the mother had not been given notice of the initiating proceeding where the mother was provided with notice of the proceeding in the responding court and was given an opportunity to be heard at a hearing which she attended with appointed counsel in the responding court.

D.C.—*Watson v. Dreadin*, 309 A.2d 493 (D.C. 1973).

(2) The Uniform Reciprocal Enforcement of Support Act authorizing the examination of a person initiating the proceeding by deposition does not constitute a denial of due process on the ground that the party proceeded against does not have an equal opportunity to examine the person who initiated the proceedings in another state.

N.M.—*State ex rel. Terry v. Terry*, 1969-NMSC-040, 80 N.M. 185, 453 P.2d 206 (1969).

Cal.—*In re Buchman's Estate*, 123 Cal. App. 2d 546, 267 P.2d 73, 47 A.L.R.2d 291 (2d Dist. 1954).

Neb.—*Watkins v. Dodson*, 159 Neb. 745, 68 N.W.2d 508 (1955).

Va.—*Mountain Mission School, Inc. v. Buchanan Realty Corp.*, 207 Va. 518, 151 S.E.2d 403 (1966).

Possessory warrant proceedings

State possessory warrant proceedings under a statute providing a summary mode of compelling production of property without the filing of a bond by the plaintiff, notice to the defendant, or opportunity for a meaningful hearing violated the defendant's right to due process of law.

Ga.—*Roberts v. Macaulay*, 232 Ga. 660, 208 S.E.2d 478 (1974).

U.S.—*Cox v. Yellowstone County*, 795 F. Supp. 2d 1128 (D. Mont. 2011).

U.S.—*Gilbert v. Homar*, 520 U.S. 924, 117 S. Ct. 1807, 138 L. Ed. 2d 120, 118 Ed. Law Rep. 590 (1997);

Zinermon v. Burch, 494 U.S. 113, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982); *Cook v. Carlson*, 364 F. Supp. 24 (D.S.D. 1973).

Conn.—*Connecticut Natural Gas Corp. v. Miller*, 239 Conn. 313, 684 A.2d 1173 (1996).

U.S.—*Gilbert v. Homar*, 520 U.S. 924, 117 S. Ct. 1807, 138 L. Ed. 2d 120, 118 Ed. Law Rep. 590 (1997).

Time of essence

Only where time is of the essence is such a practice tolerated.

U.S.—*Bronson v. Consolidated Edison Co. of New York, Inc.*, 350 F. Supp. 443 (S.D. N.Y. 1972).

U.S.—*Gay v. U.S. Bd. of Parole*, 394 F. Supp. 1374 (E.D. Va. 1975).

Colo.—*Capitol Indus. Bank v. Strain*, 166 Colo. 55, 442 P.2d 187 (1968).

N.Y.—*Nass v. Nass*, 64 A.D.2d 852, 407 N.Y.S.2d 344 (4th Dep't 1978).

R.I.—*State v. Manco*, 425 A.2d 519 (R.I. 1981).

Cancellation of insurance policies

An insurance company was not denied substantive or procedural due process with respect to a hearing on a petition for a preliminary injunction to enjoin cancellation of policies for nonpayment of assessment premiums where the company was afforded an opportunity to present affidavits and other evidentiary material and extensive argument, and the chancellor concluded the proceedings only after it became apparent that the arguments were becoming repetitive.

Pa.—*Safeguard Mut. Ins. Co. v. Williams*, 463 Pa. 567, 345 A.2d 664 (1975).

Failure to pay child support

In a proceeding on an application filed by a divorced wife seeking a rule on her ex-husband to show cause for failure to pay any child support as ordered in a divorce decree, wherein, after the wife testified, the husband was called by the wife's attorney as an adverse witness, the court's ruling which refused to allow the husband to present his case denied due process.

Ill.—*In re Marriage of Millon*, 87 Ill. App. 3d 314, 42 Ill. Dec. 559, 409 N.E.2d 54 (1st Dist. 1980).

Wage assignment

Since the courts have jurisdiction to consider any defenses to a wage assignment, this affords a borrower a full plenary hearing before a wage assignment is activated, and this, coupled with all the other sections of the personal property law pertaining to wage assignments, insures the debtor of due process.

N.Y.—*Beneficial Finance Co. of New York, Inc. v. Bond*, 83 Misc. 2d 9, 372 N.Y.S.2d 374 (Sup 1975).

Cal.—*Helvey v. Security-First Nat. Bank of Los Angeles*, 99 Cal. App. 2d 149, 221 P.2d 257 (2d Dist. 1950).

N.J.—*State v. American-Hawaiian S.S. Co.*, 29 N.J. Super. 116, 101 A.2d 598 (Ch. Div. 1953).

Due diligence

The means employed to perfect a claim to money deposited in an "escheat" fund had to satisfy the rudiments of due process; due diligence in trying to identify and give notice to those with claims on the estate had to be shown, and that required something more than serving a copy of the claimant's petition on the county's prosecuting attorney.

Mo.—*Matter of Simonin's Estate*, 637 S.W.2d 783 (Mo. Ct. App. E.D. 1982).

U.S.—*Lind v. Midland Funding, L.L.C.*, 688 F.3d 402 (8th Cir. 2012).

Colo.—*Capitol Indus. Bank v. Strain*, 166 Colo. 55, 442 P.2d 187 (1968).

Ill.—*People ex rel. Director of Dept. of Corrections v. Melton*, 384 Ill. Dec. 552, 16 N.E.3d 945 (App. Ct. 4th Dist. 2014), appeal denied, 386 Ill. Dec. 796, 21 N.E.3d 715 (Ill. 2014).

Minn.—*Nielsen Stock and Blackburn, Ltd. v. Financial Acceptance Corp. of Minnesota, Inc.*, 299 Minn. 81, 216 N.W.2d 693 (1974).

15 Wis.—*State ex rel. Lyons v. De Valk*, 47 Wis. 2d 200, 177 N.W.2d 106 (1970).

Appointment of counsel

Due process requires the appointment of counsel to represent indigent defendants in paternity proceedings wherein the State appears as a party or appears on behalf of the mother or child.

Cal.—*Salas v. Cortez*, 24 Cal. 3d 22, 154 Cal. Rptr. 529, 593 P.2d 226 (1979).

Rights of noncustodial parent

The section of a statute authorizing the entry of a judgment establishing paternity and an obligation to pay child support pursuant to a stipulation was unconstitutional as denying the due process rights of the noncustodial parent and failing to address the issue of the manner in which such parent would be permitted to waive such rights.

U.S.—*County of Ventura v. Castro*, 93 Cal. App. 3d 462, 156 Cal. Rptr. 66 (2d Dist. 1979).

16 Fla.—*Weiser v. Weiser*, 132 So. 3d 309 (Fla. 4th DCA 2014); *Shappell v. Guardianship of Naybar*, 876 So. 2d 690 (Fla. 2d DCA 2004).

N.Y.—*Eggleston v. Gloria N.*, 55 A.D.3d 309, 865 N.Y.S.2d 49 (1st Dep't 2008).

Okla.—*Towne v. Hubbard*, 2000 OK 30, 3 P.3d 154 (Okla. 2000).

Wis.—*In re Guardianship of Therese B.*, 2003 WI App 223, 267 Wis. 2d 310, 671 N.W.2d 377 (Ct. App. 2003).

17 Fla.—*Shuler v. Darby*, 786 So. 2d 627 (Fla. 1st DCA 2001), as clarified on denial of reh'g, (June 12, 2001).

18 Alaska—*Zok v. Estate of Collins*, 84 P.3d 1005 (Alaska 2004).

N.Y.—*In re Blumberg's Estate*, 83 Misc. 2d 523, 372 N.Y.S.2d 93 (Sur. Ct. 1975).

Ohio—*State ex rel. Goldberg v. Mahoning Cty. Probate Court*, 93 Ohio St. 3d 160, 2001-Ohio-1297, 753 N.E.2d 192 (2001).

Removal of executor

The due process notice requirements for the removal of an executor are simply that the executor receive notice of a petition to remove and be given an opportunity to show cause why he or she should not be removed.

Kan.—*Matter of Estate of Stoskopf*, 24 Kan. App. 2d 851, 954 P.2d 712 (1998).

Attorney

An attorney who serves as counsel for a personal representative has the right to be heard before a court can assess costs against the attorney.

Neb.—*In re Estate of Reed*, 267 Neb. 121, 672 N.W.2d 416 (2003).

19 N.Y.—*Bernard v. Kuha*, 90 Misc. 2d 148, 394 N.Y.S.2d 782 (County Ct. 1977).

20 Colo.—*People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).

Opportunity to be heard

The record did not support the contention of a person who was the subject of a quo warranto proceeding based on his placing of advertisements in which he, a nonlawyer, purported to offer legal services that he was not afforded an opportunity to attend the hearing so as to deprive him of due process.

Ala.—*McGiffert v. State ex rel. Stowe*, 366 So. 2d 680 (Ala. 1978).

21 Ala.—*Ex parte Case*, 925 So. 2d 956 (Ala. 2005).

D.C.—*In re Ifill*, 878 A.2d 465 (D.C. 2005); *In re Thyden*, 877 A.2d 129 (D.C. 2005).

Mass.—*In re Goldstone*, 445 Mass. 551, 839 N.E.2d 825 (2005); *In re Cobb*, 445 Mass. 452, 838 N.E.2d 1197 (2005).

22 U.S.—*In re Indian Motorcycle Litigation*, 307 B.R. 7 (D. Mass. 2004).

Ill.—*In re Commissioner of Banks and Real Estate*, 327 Ill. App. 3d 441, 261 Ill. Dec. 775, 764 N.E.2d 66 (1st Dist. 2001).

Notice and hearing

(1) Due process requires that notice and hearing be given to candidate for receivership, but this requirement may be disregarded in an extreme case if there is a proper showing that the notice might frustrate the

proceedings by allowing the debtor to conceal or waste his assets, and in such case, the debtor may always subsequently challenge the appointment.

Wis.—[Anchor Coatings, Inc. v. De Gelleke Co., Inc.](#), 71 Wis. 2d 333, 237 N.W.2d 725 (1976).

(2) Before a decision could be rendered elevating any or all of the lender-claimants to the status of general creditors of a corporation which was member of the stock exchange and which was in insolvency receivership, due process required that the exchange which was a general creditor and which was specifically excluded from a hearing held to determine the priority of payment among such claimants be given an opportunity to be heard and to participate in an evidentiary hearing on such status issue.

Del.—[New York Stock Exchange v. Pickard & Co., Inc.](#), 296 A.2d 143 (Del. Ch. 1972).

Appointment of receiver without notice not denial of due process

U.S.—[Granader v. Public Bank](#), 417 F.2d 75 (6th Cir. 1969).

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16D C.J.S. Constitutional Law § 1921

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

b. Special or Summary Proceedings

§ 1921. Abatement of nuisance

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West's Key Number Digest

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Statutes providing for abatement of nuisances are within the requirements of due process.

Statutes providing for abatement of nuisances are within the requirements of due process.¹ Such statutes usually provide for notice to the owner and an opportunity for a hearing before a final adjudication depriving the owner of the owner's property.² However, in an emergency situation, summary abatement of a public nuisance may be authorized under due process requirements without notice and judicial hearing.³ Equity jurisdiction to abate public nuisances is consistent with due process of law.⁴

The rights of private property are subservient to the public right to be free from nuisances, which may be regulated or abated without compensation to the owner of the offending property.⁵

CUMULATIVE SUPPLEMENT

Cases:

City's imposition of nuisance-call fees on residential landlord was not arbitrary, as element for a violation of substantive due process; by imposing the fees, city sought to forgo city officials from having to repeatedly respond to troublesome properties, regardless of the number of units, to address nuisance violations. [U.S. Const. Amend. 14](#). [Azam v. City of Columbia Heights](#), 865 F.3d 980 (8th Cir. 2017).

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S.—*Simmermon v. Gabbianelli*, 865 F. Supp. 2d 589 \(D.N.J. 2012\), opinion amended, 932 F. Supp. 2d 626 \(D.N.J. 2013\).](#)
[Ark.—*Franklin v. State*, 267 Ark. 311, 590 S.W.2d 28 \(1979\).](#)
[Cal.—*People v. Gates*, 41 Cal. App. 3d 590, 116 Cal. Rptr. 172 \(1st Dist. 1974\).](#)
Regulation, prohibition, or abatement of businesses which are or may become nuisances as not denial of due process, see [§ 2246](#).
Abatement of bawdy houses
[Ariz.—*State v. B Bar Enterprises, Inc.*, 133 Ariz. 99, 649 P.2d 978 \(1982\).](#)
- 2 [U.S.—*Sansotta v. Town of Nags Head*, 724 F.3d 533 \(4th Cir. 2013\); *Rudge v. City of Stuart*, 489 Fed. Appx. 387 \(11th Cir. 2012\).](#)
[Mich.—*Rental Property Owners Ass'n of Kent County v. City of Grand Rapids*, 455 Mich. 246, 566 N.W.2d 514 \(1997\).](#)
[N.Y.—*City of New York v. Basil Co.*, 182 A.D.2d 307, 589 N.Y.S.2d 319 \(1st Dep't 1992\).](#)
Bond requirements
That the district attorney acting on behalf of all citizens to abate and enjoin activities declared by law to be nuisances is not required to post a bond as security against the possibility that a temporary restraining order or injunction might erroneously issue does not operate to deprive individuals of property without due process of law.
[N.C.—*State ex rel. Gilchrist v. Hurley*, 48 N.C. App. 433, 269 S.E.2d 646 \(1980\).](#)
- 3 [Leppo v. City of Petaluma](#), 20 Cal. App. 3d 711, 97 Cal. Rptr. 840 (1st Dist. 1971).
[N.Y.—*City of New York v. Basil Co.*, 182 A.D.2d 307, 589 N.Y.S.2d 319 \(1st Dep't 1992\).](#)
- 4 [Ill.—*State v. Zimmerman*, 317 Ill. 197, 148 N.E. 5 \(1925\).](#)
- 5 [Ga.—*Williams v. State*, 150 Ga. 480, 104 S.E. 408 \(1920\).](#)
[N.C.—*Carpenter v. Boyles*, 213 N.C. 432, 196 S.E. 850 \(1938\).](#)
[Va.—*Bunkley v. Commonwealth*, 130 Va. 55, 108 S.E. 1 \(1921\).](#)

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Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

b. Special or Summary Proceedings

§ 1922. Habeas corpus proceedings

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West's Key Number Digest

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A petitioner is entitled to due process during habeas corpus proceedings.

A petitioner is entitled to due process during habeas corpus proceedings,¹ and unreasonable delays in the processing of a habeas petition may deny a petitioner constitutional due process.² For a state procedural bar to be an adequate basis to preclude federal habeas review, the state procedural bar must meet the requirements of due process.³ However, in a federal court, due process does not require an evidentiary hearing in every habeas corpus case.⁴ Since granting of an evidentiary hearing in a state court habeas corpus proceeding is governed by the state law, the refusal of the state court to grant such a hearing is not a denial of the Fourteenth Amendment due process.⁵ The refusal to appoint a counsel in a habeas corpus proceeding is not a denial of due process.⁶ The Due Process Clause does not prohibit a court from considering, along with other factors, the dangerousness of a habeas petitioner as part of its decision whether to release the petitioner pending an appeal.⁷

Depending on the circumstances of the case, in various habeas corpus proceedings, due process has been held to be denied⁸ or not denied.⁹

CUMULATIVE SUPPLEMENT

Cases:

Father's due process rights were not violated when supervision of children by Department of Children and Families was terminated without motion, where Department requested termination of supervision in judicial review and social study report filed with court, which father had received. [U.S.C.A. Const.Amend. 14](#); [West's F.S.A. R.Juv.P.Rule 8.345\(b\)](#). [M.M. v. Department of Children and Family Services](#), 170 So. 3d 840 (Fla. 3d DCA 2015).

[END OF SUPPLEMENT]

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Footnotes

1 U.S.—[Tercero v. Stephens](#), 738 F.3d 141 (5th Cir. 2013), cert. denied, 134 S. Ct. 2876, 189 L. Ed. 2d 839 (2014); [Moran v. McDaniel](#), 80 F.3d 1261 (9th Cir. 1996); [J.R. v. Hansen](#), 736 F.3d 959 (11th Cir. 2013), certified question answered, 2015 WL 2236760 (Fla. 2015).

2 N.M.—[Caristo v. Sullivan](#), 1991-NMSC-088, 112 N.M. 623, 818 P.2d 401 (1991).

3 U.S.—[Jamison v. Collins](#), 100 F. Supp. 2d 521 (S.D. Ohio 1998).

4 U.S.—[Thomas v. Beto](#), 452 F.2d 1072 (5th Cir. 1971); [Coleman v. Mitchell](#), 244 F.3d 533, 2001 FED App. 0079P (6th Cir. 2001).

Insanity

A habeas petitioner must make a substantial showing that the petitioner is so deranged that the petitioner is unaware that he or she is about to be put to death before due process requires that the petitioner be afforded a hearing on the issue of insanity.

U.S.—[Cuevas v. Collins](#), 932 F.2d 1078 (5th Cir. 1991).

5 U.S.—[Stevens v. Nelson](#), 302 F. Supp. 968 (N.D. Cal. 1968), judgment aff'd, 417 F.2d 1337 (9th Cir. 1969).

6 U.S.—[Elizalde v. Dretke](#), 362 F.3d 323 (5th Cir. 2004); [Hood v. Galaza](#), 47 F. Supp. 2d 1144 (S.D. Cal. 1999).

Indigent petitioner

The nature of the questions an indigent petitioner raised in a habeas corpus proceeding required the conclusion that it was not necessary to appoint counsel to represent him in order to afford him due process.

U.S.—[Milligan v. Stone](#), 424 F. Supp. 1088 (S.D. Cal. 1976), order aff'd, 548 F.2d 878 (9th Cir. 1977).

7 U.S.—[Hilton v. Braunskill](#), 481 U.S. 770, 107 S. Ct. 2113, 95 L. Ed. 2d 724, 7 Fed. R. Serv. 3d 1149 (1987).

8 U.S.—[Rosado v. Civiletti](#), 621 F.2d 1179 (2d Cir. 1980).

Reduction of confinement credit

A habeas trial court's sua sponte reduction of a petitioner's presentence confinement credit violated the petitioner's procedural due process rights; neither the petitioner nor the commissioner of correction had raised that issue before the habeas court, and the petitioner was not given notice and an opportunity to address the issue.

Conn.—[Mirault v. Commissioner of Correction](#), 82 Conn. App. 520, 844 A.2d 961 (2004).

9 U.S.—[Seymour v. Walker](#), 224 F.3d 542, 2000 FED App. 0270P (6th Cir. 2000).

Ohio—[Carpenter v. Jamerson](#), 69 Ohio St. 2d 308, 23 Ohio Op. 3d 290, 432 N.E.2d 177 (1982).

Custody of adopted child

Adoptive parents and a child received all the process due them in connection with the natural father's habeas corpus petition where their claimed liberty interests had been exhaustively litigated, and the order from which they sought relief was an extension of a prior order and directed that custody be surrendered "forthwith."

U.S.—[O'Connell v. Kirchner](#), 513 U.S. 1303, 115 S. Ct. 891, 130 L. Ed. 2d 873 (1995).

Forfeiture of appeal

A habeas petitioner was not denied her statutory right of appeal, in violation of the Due Process Clause, when the court of appeals adopted a rule conditioning an appeal from a district court judgment that adopts a magistrate's recommendation upon filing of objections to the magistrate's report identifying those issues on which further review is desired; rather, the right to appeal was merely conditioned upon the filing of a piece of paper.

U.S.—[Thomas v. Arn](#), 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435, 3 Fed. R. Serv. 3d 436 (1985).

Antiterrorism and Effective Death Penalty Act

Application of the Antiterrorism and Effective Death Penalty Act section, prohibiting the grant of a habeas corpus application unless the adjudication of a state court claim resulted in a decision contrary to federal law, did not deny a habeas petitioner's due process rights; the federal court still had power to issue the writ, albeit under more tightly circumscribed conditions, and the petitioner thus was not denied a forum for vindication of his constitutional rights.

U.S.—[Ladd v. Stephens](#), 748 F.3d 637 (5th Cir. 2014), cert. denied, 135 S. Ct. 192, 190 L. Ed. 2d 150 (2014); [Perez v. Marshall](#), 946 F. Supp. 1521 (S.D. Cal. 1996).

Limitations period

A statute imposing a one-year limitations period for filing a federal habeas petition was not vague or ambiguous so as to implicate due process concerns; the plain language of the statute required the petition to be filed within one year of, inter alia, the date on which the judgment became final but afforded the prisoners the benefit of tolling during the pendency of a properly filed state petition.

U.S.—[Pearson v. North Carolina](#), 130 F. Supp. 2d 742 (W.D. N.C. 2001).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

b. Special or Summary Proceedings

§ 1923. Arbitration proceedings

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Generally, the rules of due process must extend to arbitration proceedings although the due process guaranties do not control private arbitration proceedings.

Since the arbitration tribunal or arbitration proceedings are in many instances a substitute for traditional judicial remedies,¹ the rules of due process must extend to such proceedings.² However, the constitutional guarantees of due process do not control private arbitration proceedings.³ An arbitration committee is not required to adhere strictly to judicial standards of due process as required from a duly constituted court of law.⁴ The legal requirement is simply that the proceedings be carried out fairly and impartially and without denial of essential rights⁵ and that substantial procedural rights regarding hearing are provided.⁶ It does not violate due process to issue a decision based on a written submission.⁷

Due process may be lacking with respect to arbitration proceeding if some applicable code of responsibility is not followed⁸ as where there is absence of notice and hearing.⁹ Where there is a notice and opportunity to be heard in an arbitration proceeding,¹⁰ or where the grieving party is provided a meaningful opportunity to challenge the adverse evidence,¹¹ the proceeding has the necessary essentials of due process. However, the due process rights to notice and hearing prior to judgment are subject to waiver.¹² An employer who fails to attend an arbitration of grievances proceeding is not deprived of due process by the ex parte arbitration,¹³ and a rule authorizing the entry of judgment upon the ex parte filing of the arbitration award without affording notice or hearing to the judgment defendant does not violate due process of law.¹⁴ Procedural due process requires that an arbitration hearing be conducted by one not involved with a party to the proceeding.¹⁵

A failure to provide for a right of appeal from an arbitration award does not constitute a denial of due process.¹⁶ If the parties are required by statute to arbitrate their dispute, due process requires closer judicial scrutiny of the arbitrator's determination,¹⁷ with awards measured according to whether they are rational or arbitrary and capricious.¹⁸

Under a statute conferring upon an arbitrator the discretion to hold a hearing when one has been requested, a party's due process rights are not violated by the arbitrator's failure to hold a hearing.¹⁹ There is no due process right to be represented by counsel at arbitration.²⁰

Discovery.

The right to discovery is a device which is not obligatory as an essential element of due process to a valid arbitration proceeding.²¹

CUMULATIVE SUPPLEMENT

Cases:

An arbitrator's failure to admit evidence rises to a due process violation only when it prejudices the parties rights to a fair hearing. [U.S. Const. Amend. 5](#). OJSC Ukrnafta v. Carpatsky Petroleum Corporation, 955 F.3d 465 (5th Cir. 2020), opinion withdrawn and superseded on reh'g, [2020 WL 2027817 \(5th Cir. 2020\)](#) and withdrawn from bound volume.

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[Dewey v. Reynolds Metals Co.](#), 291 F. Supp. 786 (W.D. Mich. 1968); [Calbex Mineral Ltd. v. ACC Resources Co., L.P.](#), 2015 WL 1165824 (W.D. Pa. 2015).
- 2 La.—[Montelepre v. Waring Architects](#), 787 So. 2d 1127 (La. Ct. App. 4th Cir. 2001).
Md.—[Mandl v. Bailey](#), 159 Md. App. 64, 858 A.2d 508 (2004).
Mass.—[Woods v. Commercial Union Ins. Companies](#), 52 Mass. App. Ct. 398, 753 N.E.2d 840 (2001).
Industry-controlled panel
When a party is required to arbitrate before an industry-controlled arbitration panel in accordance with rules propagated by the industry, it is incumbent upon the arbitrators to provide a fair forum and to respect fundamental due process rights.
N.J.—[Wilde v. O'Leary](#), 374 N.J. Super. 582, 866 A.2d 205 (App. Div. 2005).

Person not party to arbitration

Although under the sections of the code of civil procedure a person who is not a party to an arbitration may be bound by the arbitration award, such provisions must be applied in a manner consistent with due process of law.

Cal.—*Southern Cal. Pipe Trades Dist. Council No. 16 v. Merritt*, 126 Cal. App. 3d 530, 179 Cal. Rptr. 794 (2d Dist. 1981).

Federal Arbitration Act

The provisions of the Federal Arbitration Act providing for limited judicial review are designed to preserve due process but not to permit unnecessary public intrusion into private arbitration procedures.

U.S.—*U.S. Life Ins. Co. v. Superior Nat. Ins. Co.*, 591 F.3d 1167 (9th Cir. 2010); *Kyocera Corp. v. Prudential-Bache Trade Services, Inc.*, 341 F.3d 987 (9th Cir. 2003).

Confidentiality

In some state courts, the statutory mediation laws require confidentiality and explicitly bars disclosure of communications made during mediation absent an express statutory exception or the implication of due process concerns. *Lappe v. Superior Court*, 232 Cal. App. 4th 774, 181 Cal. Rptr. 3d 510 (2d Dist. 2014), review denied, (Mar. 11, 2015).

Minn.—*Kennedy, Matthews, Landis, Healy & Pecora, Inc. v. Young*, 524 N.W.2d 752 (Minn. Ct. App. 1994).

Ill.—*Rosee v. Board of Trade of City of Chicago*, 43 Ill. App. 3d 203, 1 Ill. Dec. 730, 356 N.E.2d 1012 (1st Dist. 1976).

Impartial tribunal

The standard due process entitlement to an impartial tribunal is relaxed when the tribunal is an arbitral tribunal rather than a court.

U.S.—*United Transp. Union v. Gateway Western Ry. Co.*, 284 F.3d 710 (7th Cir. 2002).

Idaho—*Cady v. Allstate Ins. Co.*, 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Ill.—*Rosee v. Board of Trade of City of Chicago*, 43 Ill. App. 3d 203, 1 Ill. Dec. 730, 356 N.E.2d 1012 (1st Dist. 1976).

Mich.—*MGM Brakes Division of Indian Head, Inc. v. Uni-Bond, Inc.*, 111 Mich. App. 467, 315 N.W.2d 170 (1981).

U.S.—*Yonir Technologies, Inc. v. Duration Systems (1992) Ltd.*, 244 F. Supp. 2d 195 (S.D. N.Y. 2002).

Minn.—*Crosby-Ironton Federation of Teachers, Local 1325 v. Independent School Dist. No. 182, Crosby-Ironton*, 285 N.W.2d 667 (Minn. 1979).

Pa.—*Mellon v. Travelers Ins. Co.*, 267 Pa. Super. 191, 406 A.2d 759 (1979).

U.S.—*Yonir Technologies, Inc. v. Duration Systems (1992) Ltd.*, 244 F. Supp. 2d 195 (S.D. N.Y. 2002).

N.Y.—*McMahan & Co. v. Dunn Newfund I, Ltd.*, 230 A.D.2d 1, 656 N.Y.S.2d 620 (1st Dep't 1997).

Foreign arbitration proceedings

U.S.—*Biotronik Mess-Und Therapiegeraete GmbH & Co. v. Medford Medical Instrument Co.*, 415 F. Supp. 133 (D.N.J. 1976).

Trial de novo

The defendants were not entitled to a vacation of an arbitration award entered in favor of the plaintiff on the ground that there was a failure of due process where the rules provide for a trial de novo, and the defendants had made a timely application therefore, which had the desired effect of vacating the award and afforded the defendants an adequate opportunity to be heard.

N.Y.—*Lehman Millet Inc. v. Parish*, 109 Misc. 2d 288, 440 N.Y.S.2d 164 (Sup 1981).

Ohio—*McDonald v. Dayton*, 146 Ohio App. 3d 598, 2001-Ohio-1825, 767 N.E.2d 764 (2d Dist. Montgomery County 2001).

Voluntary, knowing, and intelligent waiver

Due process of law requires no more than that waiver of any further notice and hearing with respect to an arbitration proceeding be voluntary, knowingly, and intelligently made.

Colo.—*Columbine Valley Const. Co. v. Board of Directors, Roaring Fork School Dist.* RE-1J, 626 P.2d 686 (Colo. 1981).

Cal.—*Northern Cal. Dist. Council of Hod Carriers v. Pennsylvania Pipeline, Inc.*, 103 Cal. App. 3d 163, 162 Cal. Rptr. 851 (1st Dist. 1980).

Colo.—*Columbine Valley Const. Co. v. Board of Directors, Roaring Fork School Dist.* RE-1J, 626 P.2d 686 (Colo. 1981).

- 15 Pa.—*Abramovich v. Pennsylvania Liquor Control Bd.*, 490 Pa. 290, 416 A.2d 474 (1980).
16 Pa.—*City of Washington v. Police Dept. of City of Washington*, 436 Pa. 168, 259 A.2d 437 (1969).
17 N.Y.—*G.E.I.C.O. General Ins. Co. v. Canal Ins. Co.*, 189 Misc. 2d 467, 733 N.Y.S.2d 847 (N.Y. City Civ. Ct. 2001).
18 N.Y.—*G.E.I.C.O. General Ins. Co. v. Canal Ins. Co.*, 189 Misc. 2d 467, 733 N.Y.S.2d 847 (N.Y. City Civ. Ct. 2001).
Arbitrator's power
In compulsory arbitration cases, judicial review relating to the issue of an arbitrator exceeding his or her power includes review of whether the award is supported by the evidence or other basis in reason as may be appropriate and appearing on the record.
N.Y.—*LaCova v. Allstate Ins. Co.*, 99 Misc. 2d 678, 416 N.Y.S.2d 700 (Sup 1979).
19 Colo.—*Carson v. PaineWebber, Inc.*, 62 P.3d 996 (Colo. App. 2002).
20 Cal.—*Outdoor Services, Inc. v. Pabagold, Inc.*, 185 Cal. App. 3d 676, 230 Cal. Rptr. 73 (1st Dist. 1986).
21 Pa.—*Harleysville Mut. Cas. Co. v. Adair*, 421 Pa. 141, 218 A.2d 791 (1966).

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16D C.J.S. Constitutional Law § 1924

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

b. Special or Summary Proceedings

§ 1924. Bankruptcy proceedings

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Fundamental principles of due process extend to bankruptcy proceedings, including notice to creditors of the barred claims date.

Fundamental principles of due process extend to bankruptcy proceedings, including notice to creditors of the barred claims date.¹ By filing an adversary proceeding, the concerns of due process and notice are addressed, and an opportunity to be heard is provided.² The provisions of the bankruptcy laws will not be found in violation of due process unless they are so grossly arbitrary and unreasonable as to be incompatible with the fundamental law.³ Summary adjudication in a bankruptcy court must comply with all requirements of procedural due process.⁴

Due process under the Fifth Amendment requires that a secured party whose collateral is to be sold free and clear of the party's lien by a bankruptcy trustee must be given fair notice of the intended action and an opportunity to be heard.⁵ Due process dictates that the debtor's creditors receive notice of the debtor's bankruptcy case and applicable bar date so that the creditors

have an opportunity to make any claims they may have against the debtor's estate.⁶ Also, as a matter of due process, a creditor is entitled to notice when an objection is filed to its claim.⁷

The issue of due process is not merely a question of whether a party was given notice; due process in a bankruptcy context requires that a party receive the degree of notice specified in the Bankruptcy Code and Rules⁸ or notice reasonably calculated to apprise creditors of a case.⁹ A claim cannot be discharged in bankruptcy if the claimant is denied due process because of lack of adequate notice.¹⁰ However, due process does not require actual notice of every step in the bankruptcy proceeding.¹¹

The retrospective operation of a bankruptcy statute is subject to the Fifth Amendment's provision that property shall not be taken without due process of law.¹² A violation of the due process clause occurs when the retrospective application of a bankruptcy statute destroys vested property rights.¹³ Any exercise of bankruptcy power impairs the obligation of contracts, and therefore, such impairment is not in itself a denial of due process.¹⁴ The Fifth Amendment does not prohibit bankruptcy legislation affecting the creditor's remedy for its enforcement against the debtor's assets, or the measure of the creditor's participation therein, if the statutory provisions are consonant with a fair, reasonable, and equitable distribution of those assets.¹⁵

Particular provisions of the bankruptcy statute have been held not to violate the Due Process Clause,¹⁶ and under particular circumstances presented in a bankruptcy proceeding, due process has been held not denied.¹⁷

CUMULATIVE SUPPLEMENT

Cases:

Dismissed employee filing proof of claim in bankrupt media company's Chapter 11 case to recover for his alleged wrongful termination was not denied due process in connection with bankruptcy court's adjudication of media company's objection to his proof of claim, where employee had notice of proceedings and ample opportunity to be heard, in being allowed to file pro se response to media company's objection and, after he obtained counsel, to file supplemental response, in being allowed to attend hearing before the bankruptcy court, and in being invited to submit additional evidence in support of his proof of claim. *U.S. Const. Amend. 5. In re Tribune Media Company*, 902 F.3d 384 (3d Cir. 2018).

[END OF SUPPLEMENT]

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Footnotes

¹ U.S.—*In re Collier*, 307 B.R. 20 (Bankr. D. Mass. 2004); *In re Motors Liquidation Company*, 529 B.R. 510 (Bankr. S.D. N.Y. 2015).

Chapter 13 plan

(1) The fundamental principle that a creditor is bound by a confirmed Chapter 13 plan to which it has not objected is tempered by notions of due process.

U.S.—*In re Williams*, 528 B.R. 814 (Bankr. D. Kan. 2015); *In re Bryant*, 323 B.R. 635 (Bankr. E.D. Pa. 2005).

(2) To satisfy due process, a proposed Chapter 13 plan or plan modification should at minimum set forth the identity of the debtor, the name of each creditor whose claim(s) is to be modified, the proposed modifications to the rights of secured creditors with sufficient particularity to enable each creditor to determine how the proposed plan or plan modification will impact each secured creditor's claim, and whether the secured creditor is to retain its lien or whether its collateral is to be surrendered.

U.S.—*In re Friday*, 304 B.R. 537 (Bankr. N.D. Ga. 2003).

U.S.—*In re Feldman*, 309 B.R. 422 (Bankr. E.D. N.Y. 2004).

U.S.—*In re Huggins*, 13 B.R. 704 (Bankr. D. Kan. 1981).

U.S.—*In re Ireco Industries, Inc.*, 2 B.R. 76 (Bankr. D. Or. 1979).

U.S.—*In re Motors Liquidation Company*, 529 B.R. 510 (Bankr. S.D. N.Y. 2015); *In re Takeout Taxi Holdings, Inc.*, 307 B.R. 525 (Bankr. E.D. Va. 2004).

U.S.—*In re XO Communications, Inc.*, 301 B.R. 782 (Bankr. S.D. N.Y. 2003), order aff'd, 2004 WL 2414815 (S.D. N.Y. 2004).

U.S.—*In re Hawthorne*, 326 B.R. 1 (Bankr. D. D.C. 2005).

Heightened degree of notice

Where the Bankruptcy Code and Rules require a heightened degree of notice, due process entitles a party to receive such notice, before an order binding that party will be afforded preclusive effect.

U.S.—*In re E-Z Serve Convenience Stores, Inc.*, 318 B.R. 631 (M.D. N.C. 2004).

Notice to known and unknown creditors

The level of notice required by the Due Process Clause depends on whether a creditor is "known" or "unknown," and a debtor must provide actual notice to all "known creditors" in order to discharge their claims.

U.S.—*In re Energy Future Holdings Corp.*, 522 B.R. 520 (Bankr. D. Del. 2015).

U.S.—*Lampe v. Kash*, 735 F.3d 942 (6th Cir. 2013); *In re Schicke*, 290 B.R. 792 (B.A.P. 10th Cir. 2003), aff'd, 97 Fed. Appx. 249 (10th Cir. 2004); *In re Denke*, 524 B.R. 644 (Bankr. E.D. Va. 2015).

U.S.—*DPWN Holdings (USA), Inc. v. United Air Lines, Inc.*, 747 F.3d 145 (2d Cir. 2014).

U.S.—*In re Mariner Post-Acute Network, Inc.*, 303 B.R. 42 (Bankr. D. Del. 2003).

U.S.—*In re Bailey*, 10 B.R. 567 (Bankr. E.D. Tenn. 1981).

U.S.—*In re Ambrose*, 4 B.R. 395, 55 A.L.R. Fed. 342 (Bankr. N.D. Ohio 1980).

U.S.—*Campbell v. Alleghany Corp.*, 75 F.2d 947 (C.C.A. 4th Cir. 1935); *In re Colston*, 11 B.R. 251 (Bankr. N.D. Ga. 1981).

U.S.—*Kuehner v. Irving Trust Co.*, 299 U.S. 445, 57 S. Ct. 298, 81 L. Ed. 340 (1937); *In re Purdy*, 16 B.R. 847 (N.D. Ga. 1981).

U.S.—*In re Sapolin Paints, Inc.*, 20 B.R. 497 (Bankr. E.D. N.Y. 1982).

Fees of petition preparer

A Bankruptcy Code provision that prohibits a bankruptcy petition preparer from collecting fees in excess of the value of services rendered provides adequate notice of what conduct is prohibited and is not unconstitutionally vague.

U.S.—*In re Barcelo*, 313 B.R. 135 (Bankr. E.D. N.Y. 2004).

Jurisdiction and venue provisions

U.S.—*In re American Aluminum Window Corp.*, 15 B.R. 803 (Bankr. D. Mass. 1981).

U.S.—*Matter of Holtkamp*, 669 F.2d 505 (7th Cir. 1982).

Notice of motion to dismiss

Where notice of a motion to dismiss is sent to the address listed by the debtor in the debtor's petition, due process is satisfied.

U.S.—*In re Villarreal*, 304 B.R. 882, 57 Fed. R. Serv. 3d 1015 (B.A.P. 8th Cir. 2004).

Interpreter for hearing and speech impaired

Even if the debtors were both hearing impaired and could not communicate effectively without the assistance of a competent interpreter for the hearing and speech impaired, failure to appoint a competent interpreter at a meeting of creditors and a discharge hearing would not deny the debtors due process.

U.S.—*In re Morrison*, 22 B.R. 969 (Bankr. N.D. Ohio 1982).

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§ 1925. Proceedings involving liens and mortgages

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West's Key Number Digest

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In testing whether a lien procedure complies with the requirements of due process, it will be examined in its entirety; the right of a mortgagor to redeem as an incident of every mortgage cannot be extinguished except by due process of law.

In testing whether a lien procedure complies with the requirements of due process, it will be examined in its entirety, and the lack of a provision for a prior hearing in and of itself will not be constitutionally fatal if other saving characteristics are present.¹ The absence of a statutory provision for notice or hearing for a defendant at a meaningful time and in a meaningful manner does deprive a defendant of his or her constitutional right to due process of law.²

The sale provision of a lien statute which permits the sale of property by a lienor without affording the owner an opportunity for notice and a hearing to judicially determine the validity of the underlying debt violates the Due Process Clause of the Fourteenth Amendment.³ Also, the innkeeper's lien law which permits summary seizure of a guest's property without regard to the validity

of the particular claim and without regard to whether the particular guest is likely to remove or conceal himself or herself and his or her property if given notice and opportunity for a hearing denies due process.⁴

With respect to due process requirements of a mechanic's lien statute, mechanics' and materialmen's liens do not amount to a taking significant enough for due process to require notice and an opportunity to be heard prior to the filing of the lien.⁵

The right of a mortgagor to redeem as an incident of every mortgage cannot be extinguished except by due process of law.⁶ Due process requires that the notice provisions must be strictly followed in foreclosure cases,⁷ and particular procedures with respect to foreclosure of mortgages have been held to comply with due process.⁸ The Due Process Clause of the Fourteenth Amendment does not require that the mortgagor in a foreclosure proceeding must be afforded a hearing prior to the confirmation of sale where the trial court has complied with all of the statutory requirements.⁹

CUMULATIVE SUPPLEMENT

Cases:

Texas's expedited procedure for foreclosure on homestead properties did not violate borrowers' due process rights, even though state court issued foreclosure order without hearing, where borrowers were permitted to challenge foreclosure order by filing independent suit in court of competent jurisdiction. [U.S. Const. Amend. 14](#); [Tex. R. Civ. P. 736.8](#). [Burciaga v. Deutsche Bank National Trust Company](#), 871 F.3d 380 (5th Cir. 2017).

Nevada statutes governing notice to be provided by a homeowners' association (HOA) to deed of trust grantees when HOA foreclosed on its superpriority lien did not, on its face, violate grantee's Fourteenth Amendment right to due process, arising out of HOA's foreclosure proceeding, which led to purchaser's purchase of property at auction, and extinguishment of grantee's lien on property; grantee did not allege that it was particularly unsophisticated, but instead asserted that notice contemplated by statute was insufficient, and if that had been correct, such notice would have been equally insufficient for any holder of an interest in the property, but Court of Appeals had previously concluded in another case that statute was facially valid. [U.S. Const. Amend. 14](#); [Nev. Rev. St. §§ 116.31162\(1\), 116.311635\(1\), 116.31168\(1\)](#). [Wells Fargo Bank, N.A. v. Mahogany Meadows Avenue Trust](#), 979 F.3d 1209 (9th Cir. 2020).

Written demand provided by owner of automobile dealership to president of insurance business, notifying president of his right in automobile lien foreclosure proceeding to hearing concerning validity of president's lien on vehicle, was insufficient under Due Process Clause to provide president notice of foreclosure proceeding, and thus trial court was statutorily authorized to set aside lien foreclosure judgment as to president for lack of personal jurisdiction, where owner did not send written demand to president's office address or home address, which were known to owner, but rather to fraudster's home address, as provided on insurance card and tax printout inside vehicle, and owner did not make any other attempt to ensure president received written demand following its return to owner as "undeliverable." [U.S. Const. Amend. 14](#); [Ga. Code Ann. § 9-11-60\(d\)](#). [Duvall v. Cronic](#), 347 Ga. App. 763, 820 S.E.2d 780 (2018).

[END OF SUPPLEMENT]

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Footnotes

¹ Conn.—[Fermont Division, Dynamics Corp. of America, Inc. v. Smith](#), 178 Conn. 393, 423 A.2d 80 (1979).
Foreclosure of liens on personal property

A statute setting forth a procedure for foreclosing liens on personal property, other than mortgages, is unconstitutional on due process grounds with respect to the foreclosure of any lien pursuant to its provisions, not only mechanics' liens.

U.S.—[Mason v. Garris](#), 364 F. Supp. 452 (N.D. Ga. 1973).

2 Conn.—[Owens-Corning Fiberglass Corp. v. Lewis](#), 169 Conn. 76, 362 A.2d 968 (1975).

Absence of notice

A state statute which permitted a landlord to summarily without notice dispossess a tenant and assert a lien against the tenant's property for nonpayment of rent violated due process even though the tenant could obtain possession of his property by posting bond in double the amount of the landlord's claim.

U.S.—[MacQueen v. Lambert](#), 348 F. Supp. 1334 (M.D. Fla. 1972).

3 U.S.—[Caesar v. Kiser](#), 387 F. Supp. 645 (M.D. N.C. 1975).

Cal.—[Adams v. Department of Motor Vehicles](#), 11 Cal. 3d 146, 113 Cal. Rptr. 145, 520 P.2d 961, 64 A.L.R.3d 803 (1974).

4 N.Y.—[Blye v. Globe-Wernicke Realty Co.](#), 33 N.Y.2d 15, 347 N.Y.S.2d 170, 300 N.E.2d 710 (1973).

5 U.S.—[Spielman-Fond, Inc. v. Hanson's Inc.](#), 379 F. Supp. 997 (D. Ariz. 1973), judgment aff'd, 417 U.S. 901, 94 S. Ct. 2596, 41 L. Ed. 2d 208 (1974).

Ind.—[Haimbaugh Landscaping, Inc. v. Jegen](#), 653 N.E.2d 95 (Ind. Ct. App. 1995).

6 U.S.—[Bonner v. B-W Utilities, Inc.](#), 452 F. Supp. 1295 (W.D. La. 1978).

Fla.—[Maniscalco v. Hollywood Fed. Sav. and Loan Ass'n](#), 397 So. 2d 453 (Fla. 4th DCA 1981).

7 Colo.—[Dews v. District Court In and For City and County of Denver](#), 648 P.2d 662 (Colo. 1982).

8 Ga.—[National Community Builders, Inc. v. Citizens and Southern Nat. Bank](#), 232 Ga. 594, 207 S.E.2d 510 (1974).

Okla.—[Reliable Life Ins. Co. of St. Louis, Mo. v. Cook](#), 1979 OK 88, 601 P.2d 455 (Okla. 1979).

9 Ohio—[Shumay v. Lake Chateau, Inc.](#), 70 Ohio St. 2d 20, 24 Ohio Op. 3d 36, 434 N.E.2d 277 (1982).

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16D C.J.S. Constitutional Law § 1926

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

c. Provisional Remedies

(1) In General

§ 1926. Due process and injunctive remedies, generally

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4480 to 4487

The constitutional guaranties of due process of law do not forbid the grant by courts of their usual preventive or injunctive remedies to protect property rights, and particular provisional remedies have been upheld as not denying due process.

The constitutional guaranties of due process of law do not forbid the grant by courts of their usual preventive or injunctive remedies to protect property rights,¹ and particular provisional remedies have been upheld as not denying due process.² In fact, where the parties are threatened with irreparable injury, denial of interlocutory relief may constitute a denial of due process of law.³

On the other hand, due process is an essential element and requires a strict interpretation and rigid application of the requirements of law in a light most favorable to one whose property is subject to prejudgment seizure.⁴ It is inherent in due process that a

party seeking prejudgment seizure of property must demonstrate that the asset will be dissipated or wasted unless it is escrowed or attached.⁵ Where defendant's property has been sequestered, the defendant has the right under the Due Process Clause to defend the same.⁶ However, reasonable conditions placed upon the right to defend are not constitutionally prohibited.⁷

Statutes, with respect to provisional remedies, discriminating between residents and nonresidents of a state are violative of due process.⁸

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Footnotes

- 1 U.S.—Cayuga Indian Nation of New York v. Fox, 544 F. Supp. 542 (N.D. N.Y. 1982); Puerto Rico Intern. Airlines, Inc. v. Colon, 409 F. Supp. 960 (D.P.R. 1975).
- 2 Ark.—Galloway v. Arkansas State Highway and Transp. Dept., 318 Ark. 303, 885 S.W.2d 17 (1994).
- 3 U.S.—Porter v. Investors' Syndicate, 286 U.S. 461, 52 S. Ct. 617, 76 L. Ed. 1226 (1932), on reh'g, 287 U.S. 346, 53 S. Ct. 132, 77 L. Ed. 354 (1932).
- 4 N.J.—Buchman v. Smith, 136 N.J. Eq. 246, 41 A.2d 262 (Ch. 1945), order aff'd, 137 N.J. Eq. 215, 44 A.2d 179, 161 A.L.R. 1069 (Ct. Err. & App. 1945).
- 5 U.S.—Matter of Reading Co., 2 B.R. 719 (E.D. Pa. 1980).
- 6 U.S.—U. S. Industries, Inc. v. Gregg, 58 F.R.D. 469 (D. Del. 1973).
- 7 **General appearance rule**
What is reasonable or unreasonable in conditioning a defendant's right to defend sequestered property must be answered with reference to the public interest involved in requiring a general appearance and the burden which such rule places upon the defendant.
U.S.—U. S. Industries, Inc. v. Gregg, 58 F.R.D. 469 (D. Del. 1973).
- 8 Wis.—State ex rel. McKee v. Breidenbach, 246 Wis. 513, 17 N.W.2d 554 (1945).

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(1) In General

§ 1927. Notice of pendency; unreasonable searches and seizures

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4480 to 4487

A plaintiff may not be deprived of its statutory right to file notices of pendency without due process of law; the Fourth Amendment guaranty against unreasonable seizures applies to the states through the Fourteenth Amendment's Due Process Clause.

A plaintiff may not be deprived of its statutory right to file notices of pendency without due process of law.¹

In general, in civil proceedings, the Fourth Amendment guaranty against unreasonable searches and seizures is applicable to the states by reason of the Due Process Clause of the Fourteenth Amendment.²

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Footnotes

- 1 U.S.—*Cayuga Indian Nation of New York v. Fox*, 544 F. Supp. 542 (N.D. N.Y. 1982).
- 2 Ohio—*Wilson v. City of Cincinnati*, 46 Ohio St. 2d 138, 75 Ohio Op. 2d 190, 346 N.E.2d 666 (1976).
Tex.—*Ciulla v. State*, 434 S.W.2d 948 (Tex. Civ. App. Houston 1st Dist. 1968).
- Juveniles**
The right against unreasonable searches and seizures applies to juveniles in accordance with due process of law, and the protection extended to a young boy who was charged with an act which would have been characterized as criminal had he been an adult.
N.J.—*State v. Lowry*, 95 N.J. Super. 307, 230 A.2d 907 (Law Div. 1967).
- Civil investigation**
Protection against unreasonable searches and seizures, which extends to intrusions during civil as well as criminal investigations, is by the Fourteenth Amendment afforded against state action.
U.S.—*Reyes v. Edmunds*, 472 F. Supp. 1218 (D. Minn. 1979).
- Lis pendens filed against criminal defendant's property**
Lis pendens filed against criminal defendant's property was not a taking violating due process and unreasonable seizures but only preserves the government's interest while providing ownership use of the property.
U.S.—*Diaz v. Paterson*, 547 F.3d 88 (2d Cir. 2008); *U.S. v. Jefferson*, 632 F. Supp. 2d 608 (E.D. La. 2009).

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(2) Procedural Due Process

§ 1928. Generally

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4013(3), 4013(4), 4480 to 4487

Generally, due process of law requires notice or opportunity for an early hearing and the participation of a judicial officer whenever a property owner is to be deprived of the use of property during the pendency of litigation in which the owner is involved; in certain instances, such procedure may be postponed until subsequent to the seizure but nevertheless must be afforded prior to judgment.

Generally, due process of law requires notice or opportunity for an early hearing and the participation of a judicial officer whenever a property owner is to be deprived of the use of property during the pendency of litigation in which the owner is involved.¹ In certain instances, such procedure may be postponed until subsequent to the seizure but nevertheless must be afforded prior to judgment.² As respects constitutional due process requirements, there should be no difference between the procedures used in the application for any provisional remedy,³ and the protection accorded for the procedural validity of

prejudgment seizures extends to significant property interests; the question does not concern the character of the property seized but rather the nature of the seizure and the extent of the rights affected.⁴

Any significant taking of property contravenes the Due Process Clause if the State does it without prior notice and opportunity for hearing, absent some unusual or special circumstance which reasonably justifies an early postseizure hearing on the validity of the seizure.⁵ The necessary factors to constitute such an extraordinary situation include an important governmental or general public interest, the necessity for prompt action, and state control by a governmental agent who initiates the seizure.⁶

In determining whether a statute authorizing prejudgment seizure without prior notice and hearing violates the debtor's right to procedural due process, a balancing approach must be applied under which the overriding consideration must be whether the statute authorizing the seizure minimizes the risk that the ex parte issuance of a writ will result in a wrongful or arbitrary deprivation consistent with the protection of legitimate creditor's remedies.⁷ Accordingly, prejudgment procedures carried out without prior notice to the debtor and an opportunity for a prior hearing have been held valid where such procedures effect a constitutional accommodation of the conflicting interests of the parties.⁸ The relevant inquiry requires, first, consideration of the private interest that will be affected by the prejudgment measure; second, an examination of the risk of erroneous deprivation through the procedures under attack and the probable value of additional or alternative safeguards; and third, principal attention to the interest of the party seeking the prejudgment remedy, with, nonetheless, due regard for any ancillary interest the government may have in providing the procedure or foregoing the added burden of providing greater protections.⁹

In achieving a constitutional accommodation of the interests of the debtor and creditor, the issuance and supervision of the order granting relief is of vital importance.¹⁰ Only if certain procedural safeguards are included in the process will the possibility of a wrongful taking from the debtor be minimized and the seizure of the goods without prior notice and hearing thereby fall within the limits of tolerance of due process.¹¹ Specifically, for the requirements of due process to be met, it is necessary that the statute authorizing preliminary relief provide that the relief issue only after there has been an application made under oath alleging personal knowledge of facts which form the basis for prejudgment seizure¹² and after the application has been approved by a competent officer acting judicially who has found that the requisite showing has been made.¹³

Additionally, due process requires that the statute authorizing relief afford the debtor an opportunity for an immediate,¹⁴ or at least a prompt,¹⁵ hearing after seizure and that it make provision, as by requiring a bond or other security of the creditor, whereby the debtor can be indemnified for damages due to wrongful seizure.¹⁶ Furthermore, where the statute makes no provision for prior notice and hearing, it must provide some means not prejudicial to the creditor's interests by which the debtor can regain possession as by filing a reasonable bond¹⁷ or substituting other property.¹⁸ However, it has been held that a security bond need not be posted in connection with a prejudgment attachment in order to satisfy the requirements of due process¹⁹ and that any due process requirement for a security bond must be assessed in light of the facts of the particular case.²⁰

Waiver.

An ex parte order granting a provisional remedy entered pursuant to a voluntary, intelligent, and knowing waiver of notice and hearing contained in a contract does not constitute a taking of property without due process of law in violation of constitutional requirements.²¹

- 1 U.S.—*Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972);
Collins v. County of Kern, 390 F. Supp. 2d 964 (E.D. Cal. 2005); *Kirby v. Sprouls*, 722 F. Supp. 516 (C.D.
Ill. 1989).
Md.—*Roberts v. Total Health Care, Inc.*, 109 Md. App. 635, 675 A.2d 995 (1996), *aff'd*, 349 Md. 499, 709
A.2d 142 (1998).
N.D.—*Garrison Memorial Hosp. v. Rayer*, 453 N.W.2d 787 (N.D. 1990).
Or.—*Rocky B. Fisheries, Inc. v. North Bend Fabrication & Mach., Inc.*, 66 Or. App. 625, 676 P.2d 319
(1984).
 - 2 Wash.—*Staley v. Staley*, 15 Wash. App. 254, 548 P.2d 1097 (Div. 3 1976).
 - 3 N.Y.—*Associates Discount Corp. of Delaware, Inc. v. Harris*, 87 Misc. 2d 839, 386 N.Y.S.2d 982 (Sup 1976).
 - 4 Mo.—*Home Bldg. Corp. v. Ventura Corp.*, 568 S.W.2d 769 (Mo. 1978).
N.Y.—*Carl A. Morse, Inc. v. Rentar Indus. Development Corp.*, 85 Misc. 2d 304, 379 N.Y.S.2d 994 (Sup
1976), *order aff'd*, 56 A.D.2d 30, 391 N.Y.S.2d 425 (2d Dep't 1977), *order aff'd*, 43 N.Y.2d 952, 404 N.Y.S.2d
343, 375 N.E.2d 409 (1978).
- Attachment**
- (1) A statute permitting prejudgment attachment of the debtor's property violates due process.
N.D.—*Garrison Memorial Hosp. v. Rayer*, 453 N.W.2d 787 (N.D. 1990).
- (2) A temporary freeze of debts going from the attachment defendants to the principal defendant was a
deprivation of property sufficient to trigger the need for procedural due process.
U.S.—*Mississippi Chemical Corp. v. Chemical Const. Corp.*, 444 F. Supp. 925 (S.D. Miss. 1977).
- Replevin**
- Any replevin action initiated pursuant to statute must comply strictly with the statutory requirements in order
not to violate a defendant's due process rights.
N.M.—*First Nat. Bank of Santa Fe v. Southwest Yacht & Marine Supply Corp.*, 1984-NMSC-075, 101 N.M.
431, 684 P.2d 517 (1984).
- 5 U.S.—*Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972);
Blazel v. Bradley, 698 F. Supp. 756 (W.D. Wis. 1988).
Wash.—*Clearwater v. Skyline Const. Co., Inc.*, 67 Wash. App. 305, 835 P.2d 257 (Div. 1 1992).
- Distraint upon goods of stranger to lease**
- The defendant landlord's seizure of property owned by the plaintiff, a subsidiary of the building's sublessee,
without prior notice and hearing was in contravention of the Fourteenth Amendment due process guaranty,
particularly where the landlord distrained upon the goods of a stranger to both the lease and sublease, later
entered into by the plaintiff's parent corporation.
W. Va.—*State ex rel. Yanero v. Fox*, 163 W. Va. 222, 256 S.E.2d 751 (1979).
- 6 U.S.—*Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972);
Merchants Nat. Bank of Mobile v. Dredge General G. L. Gillespie, 663 F.2d 1338, 64 A.L.R. Fed. 921 (5th
Cir. 1981).
- 7 U.S.—*Hutchison v. Bank of North Carolina, N.A.*, 392 F. Supp. 888 (M.D. N.C. 1975).
U.S.—*In Matter of McLarty Industries, Inc.*, 2 B.R. 68 (Bankr. N.D. Ga. 1979).
- Not on case-by-case basis**
- While debtor's deprivation is factor to be weighed in determining whether statutory procedural scheme for
seizure comports with due process safeguards, severity of impact on debtor and interest of creditor are to be
balanced only within context of determining whether statutory scheme on its face comports with due process
safeguards, and it is not process to be undertaken by trial court on case-by-case basis.
Minn.—*International State Bank v. Gamer*, 281 N.W.2d 855 (Minn. 1979).- 8 U.S.—*Mitchell v. W. T. Grant Co.*, 416 U.S. 600, 94 S. Ct. 1895, 40 L. Ed. 2d 406, 15 U.C.C. Rep. Serv.
263 (1974).
Md.—*Pitsenberger v. Pitsenberger*, 287 Md. 20, 410 A.2d 1052 (1980).
N.Y.—*AMF Inc. v. Algo Distributors, Ltd.*, 48 A.D.2d 352, 369 N.Y.S.2d 460 (2d Dep't 1975).
- 9 U.S.—*Connecticut v. Doeher*, 501 U.S. 1, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991); *British Intern. Ins. Co.
Ltd. v. Seguros La Republica, S.A.*, 212 F.3d 138 (2d Cir. 2000).
Neb.—*Andrews v. Schram*, 252 Neb. 298, 562 N.W.2d 50 (1997).
R.I.—*Gem Plumbing & Heating Co., Inc. v. Rossi*, 867 A.2d 796 (R.I. 2005).
- 10 U.S.—*Guzman v. Western State Bank of Devils Lake, North Dakota*, 516 F.2d 125 (8th Cir. 1975).

- 11 U.S.—*Guzman v. Western State Bank of Devils Lake*, North Dakota, 516 F.2d 125 (8th Cir. 1975).
- 12 U.S.—*Jonnet v. Dollar Sav. Bank of City of New York*, 530 F.2d 1123 (3d Cir. 1976).
Mo.—*State ex rel. Tallen v. Marsh*, 633 S.W.2d 458 (Mo. Ct. App. W.D. 1982).
Tex.—*Lincoln Ten, Ltd. v. White*, 706 S.W.2d 125 (Tex. App. Houston 14th Dist. 1986).
- 13 Ohio—*State ex rel. Goldberg v. Mahoning Cty. Probate Court*, 93 Ohio St. 3d 160, 2001-Ohio-1297, 753 N.E.2d 192 (2001).
Writ issued by clerk
Prejudgment attachment code provisions violated due process by allowing writs of attachment to be issued by the circuit clerk instead of the judge.
Ark.—*McCrary v. Johnson*, 296 Ark. 231, 755 S.W.2d 566 (1988).
- 14 Ohio—*State ex rel. Goldberg v. Mahoning Cty. Probate Court*, 93 Ohio St. 3d 160, 2001-Ohio-1297, 753 N.E.2d 192 (2001).
Idaho—*Overman v. Overman*, 102 Idaho 235, 629 P.2d 127 (1980).
- 15 U.S.—*Mitchell v. W. T. Grant Co.*, 416 U.S. 600, 94 S. Ct. 1895, 40 L. Ed. 2d 406, 15 U.C.C. Rep. Serv. 263 (1974); *F.D.I.C. v. Isban*, 870 F. Supp. 24 (D. Conn. 1994).
R.I.—*Gem Plumbing & Heating Co., Inc. v. Rossi*, 867 A.2d 796 (R.I. 2005).
- 16 U.S.—*National Stabilization Agreement of Sheet Metal Industry Trust Fund v. Evans*, 71 F. Supp. 2d 427 (M.D. Pa. 1999).
Ohio—*State ex rel. Goldberg v. Mahoning Cty. Probate Court*, 93 Ohio St. 3d 160, 2001-Ohio-1297, 753 N.E.2d 192 (2001).
Judicial discretion
The trial court's discretion under a prejudgment remedy statute to determine the terms of a security bond does not violate the requirements of procedural due process.
Conn.—*Sassone v. Lepore*, 226 Conn. 773, 629 A.2d 357 (1993).
- 17 U.S.—*Jonnet v. Dollar Sav. Bank of City of New York*, 530 F.2d 1123 (3d Cir. 1976).
W. Va.—*Persinger v. Edwin Associates, Inc.*, 159 W. Va. 898, 230 S.E.2d 460 (1976).
- 18 U.S.—*Jonnet v. Dollar Sav. Bank of City of New York*, 530 F.2d 1123 (3d Cir. 1976).
- 19 U.S.—*Result Shipping Co., Ltd. v. Ferruzzi Trading USA Inc.*, 56 F.3d 394 (2d Cir. 1995).
- 20 Conn.—*Sassone v. Lepore*, 226 Conn. 773, 629 A.2d 357 (1993).
- 21 N.Y.—*Massachusetts Mut. Life Ins. Co. v. Avon Associates, Inc.*, 83 Misc. 2d 829, 373 N.Y.S.2d 464 (Sup 1975).

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Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

1. General Considerations

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(2) Procedural Due Process

§ 1929. Prejudgment seizure to secure jurisdiction

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4480 to 4487

A prejudgment seizure of property to secure jurisdiction falls within an exception to the due process requirement that deprivation of property requires prior notice and an opportunity to be heard, but due process requires certain procedural safeguards before an order granting such a seizure may be issued.

A prejudgment seizure of property to secure jurisdiction falls within an exception to the due process requirement that deprivation of property requires prior notice and an opportunity to be heard.¹ However, due process requires that the order granting such a seizure issue only upon a sworn statement which at a minimum must include the facts on which the cause of action is predicated, the amount claimed, that defendant is a nonresident, and that the defendant has specified property in the state.²

With respect to the determination to authorize such a procedure, it is necessary that approval be given by a judge or an official with sufficient competence to ascertain whether the conditions for the procedure have been met or whether a valid claim has been

pleaded.³ Additionally, the procedure must provide some machinery to indemnify the defendant for damages due to wrongful seizure.⁴ There must be an opportunity for a hearing after seizure at which the plaintiff will have to prove the grounds upon which the order was granted⁵ and, if defendant puts residency in issue, that the defendant is in fact a nonresident.⁶

Admiralty proceedings.

As a result of the special character of admiralty proceedings, due process does not require that notice and an opportunity for a hearing be given prior to issuing a writ of foreign attachment or garnishment for the purpose of assuring a nonresident defendant's appearance in an in personam suit and assuring satisfaction in case the suit is successful.⁷ Maritime attachment warrants consideration of a more flexible application of the doctrine of due process consistent with its historical function as a security device in maritime commerce.⁸

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Footnotes

- 1 U.S.—*Jonnet v. Dollar Sav. Bank of City of New York*, 530 F.2d 1123 (3d Cir. 1976).
Cal.—*Property Research Financial Corp. v. Superior Court*, 23 Cal. App. 3d 413, 100 Cal. Rptr. 233 (2d Dist. 1972).
Sequestration
A sequestration statute empowering a court of chancery to seize a nonresident's property having a situs in the state to compel the nonresident's appearance in the pending action is not unconstitutional as denying due process because of a failure to require notice before a sequestration order issues since such seizure is an "extraordinary situation" for which the Supreme Court of United States recognized an exception from the usual requirement of prior notice and opportunity to be heard.
Del.—*Gordon v. Michel*, 297 A.2d 420 (Del. Ch. 1972).
- 2 U.S.—*Jonnet v. Dollar Sav. Bank of City of New York*, 530 F.2d 1123 (3d Cir. 1976); *Aaron Ferer & Sons Co. v. Berman*, 431 F. Supp. 847 (D. Neb. 1977).
- 3 U.S.—*Jonnet v. Dollar Sav. Bank of City of New York*, 530 F.2d 1123 (3d Cir. 1976); *Aaron Ferer & Sons Co. v. Berman*, 431 F. Supp. 847 (D. Neb. 1977).
Del.—*Cable Advertising Networks, Inc. v. DeWoody*, 632 A.2d 1383 (Del. Ch. 1993).
- 4 U.S.—*Jonnet v. Dollar Sav. Bank of City of New York*, 530 F.2d 1123 (3d Cir. 1976); *Aaron Ferer & Sons Co. v. Berman*, 431 F. Supp. 847 (D. Neb. 1977).
- 5 U.S.—*Jonnet v. Dollar Sav. Bank of City of New York*, 530 F.2d 1123 (3d Cir. 1976); *Aaron Ferer & Sons Co. v. Berman*, 431 F. Supp. 847 (D. Neb. 1977).
- 6 U.S.—*Jonnet v. Dollar Sav. Bank of City of New York*, 530 F.2d 1123 (3d Cir. 1976).
- 7 U.S.—*Polar Shipping Ltd. v. Oriental Shipping Corp.*, 680 F.2d 627, 63 A.L.R. Fed. 624 (9th Cir. 1982).
Nature and kinds of remedies in admiralty proceedings, generally, see C.J.S., *Admiralty* §§ 92 to 97.
- 8 U.S.—*Day v. Temple Drilling Co.*, 613 F. Supp. 194 (S.D. Miss. 1985).
A.L.R. Library
Constitutionality of provision, in Rule B, Supplemental Rules for Certain Admiralty and Maritime Claims, allowing attachment of goods and chattels without prior notice, 63 A.L.R. Fed. 651.

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16D C.J.S. Constitutional Law § 1930

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

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1. General Considerations

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§ 1930. Preliminary, temporary, or interlocutory injunctions and restraining orders

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 4487

Preliminary injunction amounts to a deprivation of property under the Fourteenth Amendment, and due process generally requires prior notice and hearing.

The procedural requirements of due process for temporary injunctions are defined by the nature and weight of the private interest affected by the injunction; the risk of an erroneous deprivation of such interest through the procedures used, and the additional protection afforded by the proposed procedure; and the governmental function involved and the interest served by the current procedure as well as the administrative and fiscal burdens which would result from providing oral hearings.¹

The court examines the issuance of a preliminary injunction in light of the due process guarantees of the state and federal constitutions.² Since a preliminary injunction amounts to a deprivation of property within the meaning of the Fourteenth Amendment, due process requires that notice and hearing be given prior to its issuance.³ However, there are instances in which

concepts of due process will permit private parties to obtain judicial orders that restrain their adversaries from taking action pending a hearing to determine whether the challenged actions should be enjoined as being in violation of the legitimate interests of the complainants.⁴

For temporary restraining orders to meet the standards of the Due Process Clause, they must be granted by a court on the basis of facts, and not conclusory allegations, which persuasively show that to delay injunctive relief until after a hearing would result in great or irreparable injury to the plaintiff.⁵ Additionally, even with such a showing, a prehearing restraining order is to be used for a limited time.⁶ Furthermore, an immediate postorder hearing must be available,⁷ and a bond is required to insure the enjoined party against loss occasioned by an improvidently issued restraining order.⁸

In a class action suit, the due process rights of neither defendants nor the absent class members are violated where the procedures adopted do not require notice to potential class members prior to issuance of a temporary injunction so long as such procedures fairly insure the protection of those parties who are absent, yet who will be bound by the judgment, and do not prejudice the defendant.⁹

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Footnotes

- 1 U.S.—*Superior Trucking Co., Inc. v. U.S.*, 614 F.2d 481 (5th Cir. 1980).
- 2 U.S.—*Baskin v. Bogan*, 983 F. Supp. 2d 1021 (S.D. Ind. 2014), appeal dismissed, (7th Circ. 14-2037) (July 14, 2014).
Ala.—*Southern Homes, AL, Inc. v. Bermuda Lakes, LLC*, 57 So. 3d 100 (Ala. 2010).
Fla.—*McKeegan v. Ernst*, 84 So. 3d 1229 (Fla. 4th DCA 2012).
Ga.—*Patel v. State*, 289 Ga. 479, 713 S.E.2d 381 (2011).
Haw.—*In re Guardianship of Carlsmith*, 113 Haw. 236, 151 P.3d 717 (2007).
W. Va.—*State ex rel. United Mine Workers of America, Local Union 1938 v. Waters*, 200 W. Va. 289, 489 S.E.2d 266 (1997).
- 3 Cal.—*City of Signal Hill v. Owens*, 154 Cal. App. 3d 118, 200 Cal. Rptr. 925 (2d Dist. 1984).
Minn.—*Citizens State Bank of Clara City v. Wallace*, 477 N.W.2d 741 (Minn. Ct. App. 1991).
Ohio—*Sea Lakes, Inc. v. Sea Lakes Camping, Inc.*, 78 Ohio App. 3d 472, 605 N.E.2d 422 (11th Dist. Portage County 1992).
Preservation of marital assets
Although the court has the power to issue preliminary injunctions aimed at the preservation of marital assets pending equitable distribution, due process requires that a party so enjoined receive notice that the court will consider such a remedy.
N.Y.—*Novick v. Novick*, 251 A.D.2d 385, 674 N.Y.S.2d 87 (2d Dep't 1998).
Temporary child custody in divorce proceedings
Trial court violated party's procedural due process in divorce action by refusing to hold hearing and issuing an automatic temporary injunction and refusing on issue of temporary removal child from state. The guiding principal is an opportunity to be heard at a meaningful time and in a meaningful manner.
Colo.—*In re Marriage of Finer*, 893 P.2d 1381 (Colo. App. 1995).
- 4 Mo.—*State ex rel. Schoenbacher v. Kelly*, 408 S.W.2d 383 (Mo. Ct. App. 1966).
N.C.—*Jolliff v. Winslow*, 24 N.C. App. 107, 210 S.E.2d 221 (1974).
- 5 U.S.—*Baskin v. Bogan*, 983 F. Supp. 2d 1021 (S.D. Ind. 2014), appeal dismissed, (7th Circ. 14-2037) (July 14, 2014).
Cal.—*Chrysler Credit Corp. v. Waegle*, 29 Cal. App. 3d 681, 105 Cal. Rptr. 914 (2d Dist. 1972).
Haw.—*In re Guardianship of Carlsmith*, 113 Haw. 236, 151 P.3d 717 (2007).
Or.—*Huntington v. Coffee Associates Food Enterprises-Cafe*, 43 Or. App. 595, 603 P.2d 1183 (1979).
W. Va.—*State ex rel. United Mine Workers of America, Local Union 1938 v. Waters*, 200 W. Va. 289, 489 S.E.2d 266 (1997).

- 6 Wash.—*Corning & Sons, Inc. v. McNamara*, 8 Wash. App. 441, 506 P.2d 1328 (Div. 3 1973).
Cal.—*Chrysler Credit Corp. v. Waegle*, 29 Cal. App. 3d 681, 105 Cal. Rptr. 914 (2d Dist. 1972).
Haw.—*In re Guardianship of Carlsmith*, 113 Haw. 236, 151 P.3d 717 (2007).
Ten days' duration reasonable for restraining order
D.C.—*U.S. v. Perholtz*, 622 F. Supp. 1253 (D.D.C. 1985).
Okla.—*Marquette v. Marquette*, 1984 OK CIV APP 25, 686 P.2d 990 (Ct. App. Div. 1 1984).
7 W. Va.—*Camden-Clark Memorial Hosp. Corp. v. Turner*, 212 W. Va. 752, 575 S.E.2d 362 (2002).
8 U.S.—*Torres v. First State Bank of Sierra County*, 588 F.2d 1322 (10th Cir. 1978).
9 Or.—*Huntington v. Coffee Associates Food Enterprises-Cafe*, 43 Or. App. 595, 603 P.2d 1183 (1979).
Wis.—*Mercury Records Productions, Inc. v. Economic Consultants, Inc.*, 91 Wis. 2d 482, 283 N.W.2d 613 (Ct. App. 1979).

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16D C.J.S. Constitutional Law § 1931

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

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§ 1931. Garnishment

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4013(3), 4013(4), 4480 to 4487

Because garnishment deprives debtors of their property, garnishments must satisfy the requirements of procedural due process.

Because garnishment deprives debtors of their property, garnishments must satisfy the requirements of procedural due process.¹ A garnishee is a stranger to the principal case and an involuntary participant in the garnishment proceeding.² This structural circumstance imposes unique due process demands on garnishment procedures.³ The need for heightened sensitivity to due process is particularly evident where a plaintiff seeks to obtain a judgment from a garnishee.⁴

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Footnotes

- 1 U.S.—[Whitesel v. Sengenberger](#), 222 F.3d 861 (10th Cir. 2000); [New v. Gemini Capital Group](#), 859 F. Supp. 2d 990 (S.D. Iowa 2012).
Fla.—[Ray Lein Const., Inc. v. Wainwright](#), 346 So. 2d 1029 (Fla. 1977).
Property
(1) The fact that the property garnished was a sizeable bank account of a corporation rather than the household necessities of a consumer was immaterial to a determination whether the statute authorizing garnishment denied due process.
U.S.—[North Georgia Finishing, Inc. v. Di-Chem, Inc.](#), 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975).
(2) For purposes of due process requirements with respect to summary prejudgment garnishment, there is no valid distinction between wages and bank accounts since an individual or a corporation may need such assets in order to survive.
Haw.—[Brunswick Corp. v. Galaxy Cocktail Lounge, Inc.](#), 54 Haw. 656, 513 P.2d 1390 (1973).
2 Utah—[Pangea Technologies, Inc. v. Internet Promotions, Inc.](#), 2004 UT 40, 94 P.3d 257 (Utah 2004).
3 Utah—[Pangea Technologies, Inc. v. Internet Promotions, Inc.](#), 2004 UT 40, 94 P.3d 257 (Utah 2004).
Due process denied
(1) A garnishment statute which permitted a writ of garnishment to be issued in pending suits by the court clerk without participation by the judge on an affidavit of the plaintiff or the plaintiff's attorney containing only conclusory allegations, which prescribed the filing of a bond as the only method of dissolving a garnishment, which deprived the defendant of the use of the property in the garnishee's hands pending litigation and which made no provision for an early hearing denied due process, even though the statute required that the plaintiff garnish or give bond in an amount equal to double the amount sworn to be due.
U.S.—[North Georgia Finishing, Inc. v. Di-Chem, Inc.](#), 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975).
(2) Absent notice and prior hearing, a prejudgment garnishment procedure in which a summons is issued at the request of the creditor's lawyer and the lawyer by serving the garnishee sets in motion the machinery whereby wages are frozen in the interim before the trial of the main suit without any opportunity on the part of the wage earner to be heard or to tender any defense he or she might have, whether fraud or otherwise, violated fundamental principles of due process.
U.S.—[Sniadach v. Family Finance Corp. of Bay View](#), 395 U.S. 337, 89 S. Ct. 1820, 23 L. Ed. 2d 349 (1969).
Due process satisfied.
Court held that a judgment debtor is not constitutionally entitled to notice and a hearing prior to a garnishment as the existence of the underlying judgment is sufficient notice of what will follow.
U.S.—[McCarthy v. Wachovia Bank, N.A.](#), 759 F. Supp. 2d 265 (E.D. N.Y. 2011).
4 Utah—[Pangea Technologies, Inc. v. Internet Promotions, Inc.](#), 2004 UT 40, 94 P.3d 257 (Utah 2004).

16D C.J.S. Constitutional Law § 1932

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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A. Civil Remedies and Proceedings

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§ 1932. Real estate

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4480 to 4487

Generally, except in extraordinary situations, prejudgment seizures of real estate are not valid without notice and an opportunity for a prior hearing.

Some authorities have held that a nonpossessory prejudgment seizure of real estate which does not deprive the debtor of the use and possession of the property and which does not prevent the debtor from selling it, although it may make selling more difficult, does not amount to a significant deprivation of property so as to require that notice and hearing precede the seizure.¹ However, other authorities, finding that a nonpossessory seizure of real estate constitutes a substantial deprivation of a significant property interest subject to the protection of the Due Process Clause,² have held that, except in extraordinary situations, such prejudgment seizures are not valid without notice and an opportunity for a prior hearing.³

The courts have held that statutes authorizing the filing of a notice of lis pendens without providing the defendant property owner with notice and an opportunity to be heard prior to filing does not violate due process.⁴ However, it has also been held that the absence in a lis pendens statute of a provision for a hearing for the property owner at a meaningful time and in a meaningful manner deprives the property owner of the constitutional right to due process.⁵

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Footnotes

- 1 U.S.—*Matter of Northwest Homes of Chehalis, Inc.*, 526 F.2d 505 (9th Cir. 1975); *In re The Oronoka*, 393 F. Supp. 1311 (D. Me. 1975).
Ariz.—*First Recreation Corp. v. Amoroso*, 113 Ariz. 572, 558 P.2d 917 (1976).
Early discharge hearing
Attachment statutes, which permit prejudgment attachment of real estate without prior notice to the owner or a hearing, but which provide the owner with the remedy of an early hearing to discharge attachment, do not offend procedural due process.
Mont.—*Bustell v. Bustell*, 170 Mont. 457, 555 P.2d 722 (1976).
- 2 U.S.—*Hutchison v. Bank of North Carolina, N.A.*, 392 F. Supp. 888 (M.D. N.C. 1975); *In Matter of McLarty Industries, Inc.*, 2 B.R. 68 (Bankr. N.D. Ga. 1979).
- 3 U.S.—*M P I, Inc. v. McCullough*, 463 F. Supp. 887 (N.D. Miss. 1978); *Terranova v. AVCO Financial Services of Barre, Inc.*, 396 F. Supp. 1402 (D. Vt. 1975).
Wash.—*Van Blaricom v. Kronenberg*, 112 Wash. App. 501, 50 P.3d 266 (Div. 1 2002).
Attachment
A state statute that authorizes prejudgment attachment of real estate without prior notice or hearing, without a showing of extraordinary circumstances, and without a requirement that the person seeking the attachment post a bond does not satisfy the Due Process Clause.
U.S.—*Connecticut v. Doeher*, 501 U.S. 1, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991).
- 4 U.S.—*Diaz v. Pataki*, 368 F. Supp. 2d 265 (S.D. N.Y. 2005), judgment aff'd, 547 F.3d 88 (2d Cir. 2008); *Darr v. Muratore*, 143 B.R. 973 (D.R.I. 1992).
Ga.—*Aiken v. Citizens & Southern Bank of Cobb County*, 249 Ga. 481, 291 S.E.2d 717 (1982).
- 5 Conn.—*Kukanskis v. Griffith*, 180 Conn. 501, 430 A.2d 21 (1980).

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16D C.J.S. Constitutional Law § 1933

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

2. Jurisdiction and Venue

a. In General

§ 1933. Jurisdiction

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3962 to 3964, 3965(1) to 3969

It is a fundamental principle of procedural due process that a court may not issue a judgment or order against a person in the absence of personal jurisdiction.

The power of a state to assert jurisdiction over a person is limited by the Due Process Clause,¹ and any exercise of personal jurisdiction by a federal district court must satisfy due process requirements.² Only by due process of law may courts acquire jurisdiction over parties.³ It is a fundamental principle of procedural due process that a court may not issue a judgment or order against a person in the absence of personal jurisdiction.⁴

The exercise of jurisdiction must be reasonable to comport with due process.⁵ While jurisdiction by consent satisfies constitutional principles of due process,⁶ assumption of jurisdiction over a person against the person's protest, where no jurisdiction exists, is a denial of due process.⁷ Subject matter jurisdiction is derived from the law and cannot be conferred by

consent.⁸ The refusal of a court to determine a case not within its jurisdiction,⁹ or a statute limiting the jurisdiction of particular courts,¹⁰ is not a denial of due process of law.

Where forum selection provisions have been obtained through freely negotiated agreements and are not unreasonable and unjust, their enforcement does not offend due process.¹¹

Creation of courts and conferring of jurisdiction.

The Due Process Clause imposes no restraint on the legislative authority to create courts and to define their jurisdiction, or to transfer jurisdiction from one court to another,¹² and permits it to confer exclusive jurisdiction in a proper case.¹³ However, due process does preclude the legislature from conferring power on a special court to determine its own jurisdiction by making its own classification of misdemeanors and to arraign without presentment or indictment and to try without a jury.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

The Fourteenth Amendment's due process clause limits the personal jurisdiction of state courts. [U.S.C.A. Const.Amend. 14. Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County, 137 S. Ct. 1773 \(2017\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 580, 62 L. Ed. 2d 490 (1980); ePlus Technology, Inc. v. Aboud, 313 F.3d 166, 60 Fed. R. Evid. Serv. 221 (4th Cir. 2002); Byrd v. Aaron's, Inc., 14 F. Supp. 3d 667 (W.D. Pa. 2014).
 Ariz.—Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Properties, Ltd., 226 Ariz. 262, 246 P.3d 343 (2011).
 Mo.—Johnson Heater Corp. v. Deppe, 86 S.W.3d 114 (Mo. Ct. App. E.D. 2002).
Marital domicile
 The existence of a marital domicile within the state satisfies due process requirements so as to permit in personam jurisdiction for an award of alimony and child support against a vagrant spouse.
 N.J.—Egbert v. Egbert, 125 N.J. Super. 171, 309 A.2d 746 (Ch. Div. 1973).
- 2 U.S.—Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011); Seaweed, Inc. v. DMA Product & Design & Marketing LLC., 219 F. Supp. 2d 551 (S.D. N.Y. 2002).
- 3 Ariz.—Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Properties, Ltd., 226 Ariz. 262, 246 P.3d 343 (2011).
 Tex.—HMS Aviation v. Layale Enterprises, S.A., 149 S.W.3d 182 (Tex. App. Fort Worth 2004).
- 4 U.S.—Leopoldo Fontanillas, Inc. v. Luis Ayala Colon Sucesores, Inc., 283 F. Supp. 2d 579 (D.P.R. 2003).
 Ariz.—Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Properties, Ltd., 226 Ariz. 262, 246 P.3d 343 (2011).
 Ind.—Munster v. Groce, 829 N.E.2d 52 (Ind. Ct. App. 2005).
 R.I.—Guertin v. Guertin, 870 A.2d 1011 (R.I. 2005).
- 5 Mont.—Nasca v. Hull, 2004 MT 306, 323 Mont. 484, 100 P.3d 997 (2004).

- 6 U.S.—Farrell Lines Inc. v. Columbus Cello-Poly Corp., 32 F. Supp. 2d 118 (S.D. N.Y. 1997), *aff'd*, 161 F.3d 115 (2d Cir. 1998).
- 7 Mass.—Thurman v. Chicago, M. & St. P. Ry. Co., 254 Mass. 569, 151 N.E. 63, 46 A.L.R. 563 (1926).
- 8 U.S.—Sinsheimer v. Simonson, 107 F. 898 (C.C.A. 6th Cir. 1901), *aff'd*, 184 U.S. 18, 22 S. Ct. 293, 46 L. Ed. 413 (1902); Dunkleberger v. Merit Systems Protection Bd., 130 F.3d 1476 (Fed. Cir. 1997); *In re National Sugar Refining Co.*, 22 B.R. 279 (Bankr. S.D. N.Y. 1982).
Mo.—Hightower v. Myers, 304 S.W.3d 727 (Mo. 2010).
N.D.—City of Harwood v. City of Reiles Acres, 2015 ND 33, 859 N.W.2d 13 (N.D. 2015).
- 9 Mo.—State ex rel. McCaffery v. Aloe, 152 Mo. 466, 54 S.W. 494 (1899).
- 10 U.S.—Wright v. Altus Production Credit Ass'n, 468 F.2d 997 (10th Cir. 1972).
Wis.—State v. Cleveland, 164 Wis. 189, 159 N.W. 837 (1916).
- 11 U.S.—Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985); Sunward Electronics, Inc. v. McDonald, 362 F.3d 17 (2d Cir. 2004); Rahco Intern., Inc. v. Laird Elec., Inc., 502 F. Supp. 2d 1118 (E.D. Wash. 2006).
Utah—Coombs v. Juice Works Development Inc., 2003 UT App 388, 81 P.3d 769 (Utah Ct. App. 2003).
- 12 U.S.—Rottenberg v. U.S., 137 F.2d 850 (C.C.A. 1st Cir. 1943), *judgment aff'd*, 321 U.S. 414, 64 S. Ct. 660, 88 L. Ed. 834 (1944).
Tenn.—Spurgeon v. Worley, 169 Tenn. 697, 90 S.W.2d 948 (1936).
- 13 Mo.—State ex rel. Norborne Land Drainage Dist. Co. of Carroll County v. Hughes, 294 Mo. 1, 240 S.W. 802 (1922).
Patent infringements
U.S.—Pierce v. Submarine Signal Co., 25 F. Supp. 862, 1 Fed. R. Serv. 415, 1 Fed. R. Serv. 433, 1 Fed. R. Serv. 455, 1 Fed. R. Serv. 607 (D. Mass. 1939).
- 14 Tenn.—Spurgeon v. Worley, 169 Tenn. 697, 90 S.W.2d 948 (1936).

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16D C.J.S. Constitutional Law § 1934

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

2. Jurisdiction and Venue

a. In General

§ 1934. Withdrawal of jurisdiction

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3962 to 3964, 3965(1) to 3969

Congress cannot destroy constitutionally protected property rights by the expedient of withdrawing jurisdiction from every court in which suits for their enforcement can be brought.

While courts ordinarily cease to have jurisdiction when the state constitution withdraws it from them, this is not true when such withdrawal would have the effect of violating the Due Process Clause of the Federal Constitution.¹ Congress cannot destroy constitutionally protected property rights by the expedient of withdrawing jurisdiction from every court in which suits for their enforcement can be brought.² A statute divesting a court of jurisdiction over certain claims does not violate due process where jurisdiction is conferred on other courts to hear such claims.³

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Footnotes

- 1 La.—[Godchaux Co. v. Estopinal](#), 146 La. 405, 83 So. 690 (1919).
- 2 [Miller v. Howe Sound Min. Co.](#), 77 F. Supp. 540 (E.D. Wash. 1948).
- 3 U.S.—[Lamborn & Co. v. U.S.](#), 104 F.2d 75 (C.C.P.A. 1939).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

2. Jurisdiction and Venue

a. In General

§ 1935. Venue

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3962 to 3964, 3965(1) to 3969

Proper venue is a component of the due process requirement of a fair trial in a fair tribunal.

Proper venue is a component of the due process requirement of a fair trial in a fair tribunal.¹ Subject to the limitation that reasonable opportunity must be given for the prosecution and defense of civil actions,² the venue of such actions is subject to the regulation and control of the state legislature³ or, in federal matters, to regulation and control by Congress.⁴

Where there is a reasonable and not an arbitrary classification, different classes of persons or corporations may be subjected to different rules as to the venue of actions brought against them.⁵ The legislature may prescribe the place where actions of a certain character may be brought.⁶ More particularly, the legislature may prescribe that certain actions be brought in the county where the plaintiff resides,⁷ or in the county in which the defendant had an office at the time of making the contract sued on,⁸ or, in the case of an action against a carrier, at the place of shipment.⁹ It may prescribe that certain actions may be brought only

in the county in which they arise¹⁰ or that certain classes of actions against residents of the state may be brought only in the county of the defendant's residence.¹¹

Where the usual right of a citizen to be sued in the county of the citizen's residence conflicts with the rights of others to due process of law, the latter rights are so far superior as to validate a statute permitting trespassers to be sued in the county wherein the trespass occurred.¹² A defendant's right to have the case tried in the county where the petition is filed is a substantial right not to be taken away except by due process of law,¹³ and failure to afford parties adequate notice and opportunity to be heard will generally be a due process violation.¹⁴

A party who asserts a denial of due process because of the court's refusal of its application for a change of venue has the burden to prove the grounds upon which such application is made.¹⁵ Due process requires that a trial court grant a motion to change venue when a possibility of prejudice to the defendant is shown.¹⁶

CUMULATIVE SUPPLEMENT

Cases:

Change of location of trial without notice to defendants deprived defendants of due process right to be heard, and therefore default judgment entered against defendants on claim for unliquidated damages was void. [U.S.C.A. Const.Amend. 14. Vercosa v. Fields, 174 So. 3d 550 \(Fla. 4th DCA 2015\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[Crumrine v. NEG Micon USA, Inc., 104 F. Supp. 2d 1123 \(N.D. Iowa 2000\).](#)
- 2 Mo.—[Houston v. Pulitzer Pub. Co., 249 Mo. 332, 155 S.W. 1068 \(1913\).](#)
- 3 Ill.—[Mapes v. Hulcher, 363 Ill. 227, 2 N.E.2d 63 \(1936\).](#)
- 4 Wis.—[State ex rel. Saylesville Cheese Mfg. Co. v. Zimmerman, 220 Wis. 682, 265 N.W. 856 \(1936\).](#)
- 5 U.S.—[Northside Iron & Metal Co., Inc. v. Dobson & Johnson, Inc., 480 F.2d 798 \(5th Cir. 1973\).](#)
- 6 S.C.—[Windham v. Pace, 192 S.C. 271, 6 S.E.2d 270 \(1939\).](#)
- 7 Tex.—[Ramirez v. State, 550 S.W.2d 121 \(Tex. Civ. App. Austin 1977\).](#)
- 8 Ohio—[Allen v. Smith, 84 Ohio St. 283, 95 N.E. 829 \(1911\).](#)
- 9 U.S.—[Sirius America Ins. Co. v. SCPIE Indem. Co., 461 F. Supp. 2d 155 \(S.D. N.Y. 2006\); Edwards v. Gulf Mississippi Marine Corp., 449 F. Supp. 1363 \(S.D. Tex. 1978\).](#)
- 10 N.M.—[State Farm Mut. Ins. Co. v. Conyers, 1989-NMSC-071, 109 N.M. 243, 784 P.2d 986 \(1989\).](#)
- 11 La.—[Bass v. Yazoo & M.V.R. Co., 136 La. 528, 67 So. 355 \(1915\).](#)
- 12 Ga.—[Central Georgia Power Co. v. Stubbs, 141 Ga. 172, 80 S.E. 636 \(1913\).](#)
- 13 Ala.—[Jefferson County Savings Bank v. Carland, 195 Ala. 279, 71 So. 126 \(1916\).](#)
- 14 Tex.—[Buttron v. El Paso Northeastern Ry. Co., 93 S.W. 676 \(Tex. Civ. App. 1906\), writ refused.](#)
- 15 Tex.—[Boyd v. Genitempo, 260 S.W. 934 \(Tex. Civ. App. San Antonio 1924\).](#)
- 16 Ohio—[State ex rel. Keogh v. Gilmore, 35 Ohio L. Abs. 97, 39 N.E.2d 860 \(Ct. App. 2d Dist. Preble County 1941\).](#)
- 17 U.S.—[Dish Network Corp. v. TiVo, Inc., 604 F. Supp. 2d 719 \(D. Del. 2009\); Bobian v. CSA Czech Airlines, 222 F. Supp. 2d 598 \(D.N.J. 2002\).](#)

- 15 U.S.—*Shisinday v. Texas Dept. of Criminal Justice-Agency*, 124 Fed. Appx. 898 (5th Cir. 2005); *Securities and Exchange Commission v. Savoy Industries, Inc.*, 587 F.2d 1149 (D.C. Cir. 1978).
Md.—*Dinkins v. Grimes*, 201 Md. App. 344, 29 A.3d 696 (2011).
Mo.—*State ex rel. Grand River Health System Corp. v. Williamson*, 240 S.W.3d 172 (Mo. Ct. App. W.D. 2007).
Pa.—*Pennsylvania Power & Light Co. v. Gulf Oil Corp.*, 270 Pa. Super. 514, 411 A.2d 1203, 10 A.L.R.4th 1025 (1979).
- 16 Wash.—*Unger v. Cauchon*, 118 Wash. App. 165, 73 P.3d 1005 (Div. 1 2003).

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16D C.J.S. Constitutional Law § 1936

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

2. Jurisdiction and Venue

b. Nonresidents

§ 1936. Due process; assertion of jurisdiction by state courts over nonresident

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3964, 3965(1) to 3968

The assertion of jurisdiction by state courts over a nonresident defendant, such as by a long-arm statute, must comport with constitutional principles of due process, which impose a limit on the State's exercise of such jurisdiction.

The assertion of jurisdiction by state courts over a nonresident defendant,¹ as by a long-arm statute,² must comport with constitutional principles of due process, which impose a limit on the State's exercise of such jurisdiction.³ The Due Process Clause operates as a limitation on the jurisdiction of courts to enter judgments affecting the rights or interests of nonresident defendants.⁴

The Due Process Clause requires that some minimum contacts and nexus exist between the State and the individual being sued,⁵ but actual physical contacts by the defendant with the forum state are not required.⁶ The inquiry as to whether a forum state may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation.⁷ For a state to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a

substantial connection with the forum state,⁸ and the exercise of jurisdiction over a nonresident must comport with traditional notions of fair play and substantial justice.⁹

Due process requires that the court weigh more heavily the expectations of and burdens upon a defendant than the court weighs the hardships upon a plaintiff in determining the reasonableness of the exercise of personal jurisdiction.¹⁰ A plaintiff's contacts with the forum cannot be decisive in determining whether the defendant's due process rights are violated by the exercise of jurisdiction over the defendant.¹¹ Indeed, neither the status of plaintiffs alone nor the inconvenience suffered by them can serve as a basis for the exercise of jurisdiction by the courts; fundamental due process requirements are phrased in terms of fairness to defendants, not the convenience of plaintiffs.¹² Once a plaintiff has established minimum contacts in accordance with due process, the burden shifts to the defendant to establish a compelling case that the presence of some other considerations would render jurisdiction unreasonable.¹³

CUMULATIVE SUPPLEMENT

Cases:

For a suit to relate to a nonresident defendant's contacts with the forum States, for purposes of due process limits on specific personal jurisdiction, the phrase relate to incorporates real limits, as it must to adequately protect defendants who are foreign to a forum, but the specific jurisdiction inquiry does not always require proof of causation, i.e., proof that the plaintiff's claim came about because of the defendant's in-state conduct. [U.S. Const. Amend. 14. *Ford Motor Company v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 \(2021\).](#)

Because a state court's assertion of jurisdiction exposes defendants to the state's coercive power, it is subject to review for compatibility with the Fourteenth Amendment's due process clause, which limits the power of a state court to render a valid personal judgment against a nonresident defendant. [U.S.C.A. Const.Amend. 14. *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773 \(2017\).](#)

The exercise of personal jurisdiction, consistent with due process, may be either "specific or case-linked" or "general or all-purpose." [U.S.C.A. Const.Amend. 14. *Cossart v. United Excel Corp.*, 804 F.3d 13 \(1st Cir. 2015\).](#)

South Dakota courts must consider two questions to determine whether they possess personal jurisdiction over a nonresident defendant: the first inquiry is whether the legislature granted the court jurisdiction pursuant to South Dakota's long-arm statute; second, the assertion of jurisdiction must comport with federal due process requirements. [U.S. Const. Amend. 14; S.D. Codified Laws § 15-7-2. *Zhi Gang Zhang v. Rasmus*, 2019 SD 46, 932 N.W.2d 153 \(S.D. 2019\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S.—*Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 104 S. Ct. 1473, 79 L. Ed. 2d 790 \(1984\); *Gold Kist, Inc. v. Baskin-Robbins Ice Cream Co.*, 623 F.2d 375 \(5th Cir. 1980\); *Martinez v. Aero Caribbean*, 764 F.3d 1062 \(9th Cir. 2014\), cert. denied, 2015 WL 195304 \(U.S. 2015\).](#)
[Minn.—*Kreisler Mfg. Corp. v. Homstad Goldsmith, Inc.*, 322 N.W.2d 567 \(Minn. 1982\).](#)
[N.C.—*Kaplan School Supply Corp. v. Henry Wurst, Inc.*, 56 N.C. App. 567, 289 S.E.2d 607 \(1982\).](#)
[Tex.—*Sherman Gin Co. v. Planters Gin Co., Inc. of Indianola*, 599 S.W.2d 348 \(Tex. Civ. App. Texarkana 1980\), writ refused n.r.e., \(Nov. 19, 1980\).](#)

- 2 U.S.—*Tire Engineering and Distribution, LLC v. Shandong Linglong Rubber Co., Ltd.*, 682 F.3d 292 (4th Cir. 2012), cert. denied, 133 S. Ct. 846, 184 L. Ed. 2d 655 (2013); *Wells Dairy, Inc. v. Food Movers Intern., Inc.*, 607 F.3d 515 (8th Cir. 2010); *Marcus Food Co. v. DiPanfilo*, 671 F.3d 1159, 80 Fed. R. Serv. 3d 1447 (10th Cir. 2011).
Ala.—*Ex parte Bufkin*, 936 So. 2d 1042 (Ala. 2006).
Fla.—*Taylor v. Gutierrez*, 129 So. 3d 415 (Fla. 3d DCA 2013).
Ky.—*Hinners v. Robey*, 336 S.W.3d 891 (Ky. 2011).
Me.—*Estate of Hoch v. Stifel*, 2011 ME 24, 16 A.3d 137 (Me. 2011).
Neb.—*Abdouch v. Lopez*, 285 Neb. 718, 829 N.W.2d 662 (2013).
Tex.—*Nichols v. Bridges*, 163 S.W.3d 776 (Tex. App. Texarkana 2005).
- 3 U.S.—*Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984).
Ariz.—*Northern Propane Gas Co. v. Kipps*, 127 Ariz. 522, 622 P.2d 469 (1980).
Pa.—*Kenny v. Alexson Equipment Co.*, 495 Pa. 107, 432 A.2d 974 (1981).
Roots of limitations
Due process limitations on suits against nonresidents have their roots largely in our constitutional federalism and the resultant sovereignty of the states.
U.S.—*Insurance Co. of North America v. Marina Salina Cruz*, 649 F.2d 1266 (9th Cir. 1981).
- 4 U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 580, 62 L. Ed. 2d 490 (1980); *Kulko v. Superior Court of California In and For City and County of San Francisco*, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978).
Fla.—*Ford Motor Co. v. Atwood Vacuum Mach. Co.*, 392 So. 2d 1305 (Fla. 1981).
Kan.—*Davis v. Grace*, 4 Kan. App. 2d 704, 610 P.2d 1140 (1980).
Tex.—*Wet-A-Line, L.L.C. v. Amazon Tours, Inc.*, 315 S.W.3d 180 (Tex. App. Dallas 2010); *Kelly v. Novak*, 606 S.W.2d 25 (Tex. Civ. App. Houston 1st Dist. 1980).
- 5 U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014); *Logiurato v. ACTION*, 490 F. Supp. 84 (D.D.C. 1980).
Financial benefits
Financial benefits accruing to the defendant from a collateral relation to the forum state will not support jurisdiction over the defendant if they do not stem from a constitutionally cognizable contact with that state.
U.S.—*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 580, 62 L. Ed. 2d 490 (1980).
No contacts with state
Nonresident husband was not subject to jurisdiction in state that had zero contacts with husband and where resident wife sought domestic violence protective order.
N.J.—*Shah v. Shah*, 184 N.J. 125, 875 A.2d 931 (2005).
- 6 U.S.—*Pedi Bares, Inc. v. P & C Food Markets, Inc.*, 567 F.2d 933 (10th Cir. 1977); *Thermal Insulation Systems, Inc. v. Ark-Seal Corp.*, 508 F. Supp. 434 (D. Kan. 1980).
- 7 U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014).
- 8 U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014).
- 9 U.S.—*Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158 (2d Cir. 2010); *Newsome v. Gallacher*, 722 F.3d 1257 (10th Cir. 2013).
Ariz.—*Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Properties, Ltd.*, 226 Ariz. 262, 246 P.3d 343 (2011).
Okla.—*State ex rel. Edmondson v. Native Wholesale Supply*, 2010 OK 58, 237 P.3d 199 (Okla. 2010).
N.C.—*GECMC 2006-C1 Carrington Oaks, LLC v. Weiss*, 757 S.E.2d 677 (N.C. Ct. App. 2014).
S.C.—*Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005).
Tex.—*Shelter Mut. Ins. Co. v. Dallas County Hosp. Dist.*, 366 S.W.3d 858 (Tex. App. Dallas 2012).
Purposeful direction of activities toward forum state
Purposeful direction requires that the nonresident must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the nonresident knows is likely to be suffered in the forum state.
U.S.—*In re Western States Wholesale Natural Gas Antitrust Litigation*, 715 F.3d 716 (9th Cir. 2013), cert. granted, 134 S. Ct. 2899, 189 L. Ed. 2d 854 (2014) and aff'd, 135 S. Ct. 1591 (2015) and cert. denied, 135 S. Ct. 2048 (2015).

Iowa—[Shams v. Hassan](#), 829 N.W.2d 848 (Iowa 2013).

Random contacts insufficient

Due process requirement for exercise of specific jurisdiction over a nonresident defendant precludes the exercise of jurisdiction over a defendant whose affiliation with the forum state is random, fortuitous, or attenuated or the unilateral activity of another party or a third person.

Or.—[Robinson v. Harley-Davidson Motor Co.](#), 354 Or. 572, 316 P.3d 287 (2013).

10 U.S.—[Rocks v. Canadian Auto. Sport Club](#), 660 F.2d 395 (9th Cir. 1981).

Ill.—[Morgan, Lewis and Bockius LLP v. City of East Chicago](#), 401 Ill. App. 3d 947, 343 Ill. Dec. 23, 934 N.E.2d 23 (1st Dist. 2010).

Analysis in contract actions

When analyzing due process for personal jurisdiction over a nonresident defendant in a contract action, the court should examine the defendant's forum-based activity, including activities related to the contract's formation or breach, negotiations, contemplated future consequences, contract terms, and the parties' actual course of dealing.

U.S.—[Bluetarp Financial, Inc. v. Matrix Const. Co., Inc.](#), 709 F.3d 72 (1st Cir. 2013).

11 U.S.—[Walden v. Fiore](#), 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014); [Rush v. Savchuk](#), 444 U.S. 320, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980).

12 La.—[Grinnell v. Garrett](#), 295 So. 2d 496 (La. Ct. App. 3d Cir. 1974), writ denied, 300 So. 2d 181 (La. 1974).

13 U.S.—[In re Chinese Manufactured Drywall Products Liability Litigation](#), 742 F.3d 576 (5th Cir. 2014); [Felland v. Clifton](#), 682 F.3d 665 (7th Cir. 2012); [Schwarzenegger v. Fred Martin Motor Co.](#), 374 F.3d 797 (9th Cir. 2004).

Tex.—[Uche v. Allison](#), 264 S.W.3d 90 (Tex. App. Houston 1st Dist. 2007).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

2. Jurisdiction and Venue

b. Nonresidents

§ 1937. Minimum contacts

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3964, 3965(1) to 3968

Generally, for a person to be subject to in personam jurisdiction, the person must have certain minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.

Generally, for a person to be subject to in personam jurisdiction, the person must have certain minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice; those conditions are satisfied if the contacts make it reasonable to require a nonresident to defend the particular suit brought there.¹

A variety of factors relating to the particular cause of action may be relevant to the determination whether the exercise of jurisdiction would comport with traditional notions of fair play and substantial justice.² Such factors which have been considered include the duration of the activity of the nonresident within the state,³ the character and circumstances of the commission of the nonresident's acts, the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the

nonresident, and the State's interest in exercising jurisdiction.⁴ However, no particular factor is decisive,⁵ and each assertion of personal jurisdiction is tested on a case-by-case basis.⁶ The minimum contacts requirement, in order to satisfy due process, may be very minimal.⁷ Indeed, a single contact or transaction may be sufficient.⁸ It is not the quantity but rather the nature and quality of the defendant's activities which determine whether the extension of jurisdiction offends due process.⁹ As a result, jurisdiction based on physical presence alone satisfies due process.¹⁰

The defendant must have some contacts, ties, or relations with the forum state as due process does not contemplate that a state court may render a binding judgment against a defendant with whom the State has no contacts, ties, or relations.¹¹ Due process requires a minimum finding of some act by which the defendant purposefully avails itself of the privilege of conducting activity within the forum, thus invoking the benefit and protection of the laws.¹² It follows that the contact with the forum must not be fortuitous,¹³ and the defendant's conduct must be such that the defendant should have anticipated being haled into court there.¹⁴ However, foreseeability alone is not a sufficient benchmark for personal jurisdiction under the Due Process Clause.¹⁵

In determining whether a particular exercise of state court jurisdiction is consistent with due process, the inquiry must focus on the relationship among the defendant, the forum, and the litigation.¹⁶ A state which seeks to subject a nonresident to its judicial jurisdiction must have a definite interest in the litigation,¹⁷ and the mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the due process requirement of contact with the forum state.¹⁸ The due process requirement is met where the activities of the defendant in the forum state are continuous and systematic¹⁹ or substantial.²⁰

The minimum contacts requirement applies only where a state attempts to serve its process outside its territorial boundaries and has no application where the out-of-state defendant has an agent within the state with authority to receive service of process.²¹ Ownership of property may be sufficient as a basis for jurisdiction over a nonresident defendant.²² Of course, if a nonresident has no property within the state, there is nothing on which either a judgment in personam or in rem can be validly based unless the nonresident voluntarily appears.²³

Burden of proof.

When a nonresident defendant challenges the jurisdiction of the court in the forum state, the burden is on the plaintiff to prove the minimum contacts necessary to satisfy due process.²⁴

CUMULATIVE SUPPLEMENT

Cases:

A state court may exercise personal jurisdiction over an out-of-state defendant who has certain minimum contacts with the State such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. [BNSF Ry. Co. v. Tyrrell](#), 137 S. Ct. 1549 (2017).

The minimum contacts test for assessing whether the exercise of personal jurisdiction under a long-arm statute comports with constitutional due process requirements has come to rest on whether a defendant's conduct and connection with the forum State are such that it should reasonably anticipate being haled into court there. [U.S.C.A. Const.Amend. 14. Al Rushaid v. Pictet & Cie](#), 28 N.Y.3d 316, 45 N.Y.S.3d 276, 68 N.E.3d 1 (2016).

Nonresident seller's phone contact with buyer's salesperson in Texas did not amount to minimum contacts sufficient to satisfy due process requirements to exercise jurisdiction over seller in buyer's action alleging breach of contract and fraud; salesperson was contacted solely by phone and e-mail regarding purchases of non-state assets requiring no continuing relationship with state, and scrap metal materials that were subject of sales contract were neither located in Texas or shipped to Texas. *U.S. Const. Amend. 14. Jutalia Recycling, Inc. v. CNA Metals Limited*, 542 S.W.3d 90, 94 U.C.C. Rep. Serv. 2d 134 (Tex. App. Houston 14th Dist. 2017).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Burnham v. Superior Court of California, County of Marin*, 495 U.S. 604, 110 S. Ct. 2105, 109 L. Ed. 2d 631 (1990); *Calder v. Jones*, 465 U.S. 783, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984); *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977); *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158 (2d Cir. 2010); *Eurofins Pharma US Holdings v. BioAlliance Pharma SA*, 623 F.3d 147 (3d Cir. 2010); *Newsome v. Gallacher*, 722 F.3d 1257 (10th Cir. 2013).
Ariz.—*Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Properties, Ltd.*, 226 Ariz. 262, 246 P.3d 343 (2011).
Cal.—*Snowney v. Harrah's Entertainment, Inc.*, 35 Cal. 4th 1054, 29 Cal. Rptr. 3d 33, 112 P.3d 28 (2005).
La.—*Alessi v. Belanger*, 644 So. 2d 778 (La. Ct. App. 1st Cir. 1994).
Okla.—*State ex rel. Edmondson v. Native Wholesale Supply*, 2010 OK 58, 237 P.3d 199 (Okla. 2010).
Ohio—*Ricker v. Fraza/Forklifts of Detroit*, 160 Ohio App. 3d 634, 2005-Ohio-1945, 828 N.E.2d 205 (10th Dist. Franklin County 2005).
N.C.—*GEPMC 2006-C1 Carrington Oaks, LLC v. Weiss*, 757 S.E.2d 677 (N.C. Ct. App. 2014).
Tex.—*Nichols v. Bridges*, 163 S.W.3d 776 (Tex. App. Texarkana 2005).
Aggregating parties' forum contacts
The parties' relationships with each other may be significant in evaluating their ties to the forum, but constitutional requirements must be met as to each defendant over whom the state court exercises jurisdiction.
U.S.—*Rush v. Savchuk*, 444 U.S. 320, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980).
Assurance to defendants
The Due Process Clause by insuring the orderly administration of laws gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.
Okla.—*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 580, 62 L. Ed. 2d 490 (1980).
2 U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014); *Rush v. Savchuk*, 444 U.S. 320, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980).
3 U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014).
Contacts defendant created in forum state
For a state to exercise jurisdiction consistent with due process, the relationship between the nonresident defendant's suit-related conduct and the forum state must arise out of contacts that the defendant himself creates with the forum state.
U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014).
4 S.C.—*Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005).
Similar statement
In determining whether State's assertion of personal jurisdiction over nonresident defendant offends traditional notions of fair play and substantial justice so as to violate Fourteenth Amendment due process requirements, the court must consider: (1) the defendant's burden; (2) the forum state's interest; (3) the plaintiff's interest in convenient and effective relief; (4) the judicial system's interest in efficient resolution of controversies; and (5) the State's shared interest in furthering fundamental social policies.
U.S.—*In re Chinese Manufactured Drywall Products Liability Litigation*, 742 F.3d 576 (5th Cir. 2014).

N.J.—*Interlotto, Inc. v. National Lottery Admin.*, 298 N.J. Super. 127, 689 A.2d 148 (App. Div. 1997).

Specific personal jurisdiction three prong test

Another test devised examines three aspects of a nonresident's contacts for specific personal jurisdiction: (1) the nonresident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e., it must be reasonable.

U.S.—*Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 76 Fed. R. Serv. 3d 1186 (9th Cir. 2010).

Jurisdiction over foreign national

For purposes of reasonableness inquiry, in determining whether assertion of jurisdiction over nonresident violates due process, one factor is whether the exercise of personal jurisdiction by forum state interferes with foreign nation's sovereignty.

U.S.—*Newsome v. Gallacher*, 722 F.3d 1257 (10th Cir. 2013).

U.S.—*Pedi Bares, Inc. v. P & C Food Markets, Inc.*, 567 F.2d 933 (10th Cir. 1977).

U.S.—*ESAB Group, Inc. v. Centricut, LLC*, 34 F. Supp. 2d 323 (D.S.C. 1999).

Mass.—*Windsor v. Windsor*, 45 Mass. App. Ct. 650, 700 N.E.2d 838 (1998).

U.S.—*Smith v. Avco-Lycoming*, 497 F. Supp. 622 (E.D. Pa. 1980).

Sending of money

The mere sending of money into the state cannot constitute a substantial minimum contact within the purview of due process requirements.

Wis.—*Nagel v. Crain Cutter Co.*, 50 Wis. 2d 638, 184 N.W.2d 876 (1971).

U.S.—*Nelepovitz v. Boatwright*, 442 F. Supp. 1336 (D.S.C. 1977).

Colo.—*Le Manufacture Francaise Des Pneumatiques Michelin v. District Court In and for Jefferson County*, 620 P.2d 1040 (Colo. 1980).

Mich.—*Khalaf v. Bankers & Shippers Ins. Co.*, 62 Mich. App. 678, 233 N.W.2d 696 (1975), judgment aff'd, 404 Mich. 134, 273 N.W.2d 811 (1978).

Va.—*Associates Financial Services Co., Inc. v. McPeck*, 222 Va. 176, 278 S.E.2d 847 (1981).

U.S.—*Fastpath, Inc. v. Arbela Technologies Corp.*, 760 F.3d 816 (8th Cir. 2014).

Iowa—*Addison Ins. Co. v. Knight, Hoppe, Kurnik & Knight, L.L.C.*, 734 N.W.2d 473 (Iowa 2007).

Tex.—*Keenan v. Aguilar*, 391 S.W.3d 620 (Tex. App. El Paso 2012); *Nichols v. Bridges*, 163 S.W.3d 776 (Tex. App. Texarkana 2005).

Telephone call insufficient

Telephone communication between nonresident provider of borrower's opinion letter and lender's owner while the owner was in the forum state was insufficient to establish personal jurisdiction over nonresident provider consistent with due process, in lender's action against provider.

U.S.—*Rockwood Select Asset Fund XI (6)-1, LLC v. Devine, Millimet & Branch*, 750 F.3d 1178 (10th Cir. 2014).

U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011); *Burnham v. Superior Court of California, County of Marin*, 495 U.S. 604, 110 S. Ct. 2105, 109 L. Ed. 2d 631 (1990).

U.S.—*Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 580, 62 L. Ed. 2d 490 (1980).

S.D.—*Frankenfeld v. Crompton Corp.*, 2005 SD 55, 697 N.W.2d 378 (S.D. 2005).

Liability insurer

A state could not, consistently with due process, exercise quasi in rem jurisdiction over a defendant who had no forum contacts by attaching the contractual obligation of a liability insurer which was licensed to do business in the state to defend and indemnify him in connection with the suit but against which insurer the plaintiff had no direct right of action.

U.S.—*Rush v. Savchuk*, 444 U.S. 320, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980).

Sequestered property

The present and former officers and directors of a corporation and its subsidiary were denied due process when, in a shareholder's derivative action brought by a nonresident who alleged that the defendants violated

their duties to the corporation by causing it and its subsidiary to engage in actions that resulted in the corporations being held liable for substantial damages in a private antitrust suit and a large fine in a criminal contempt action, the court's assertion of jurisdiction over the defendants, invoked via an order sequestering their stock and other corporate rights, was based solely on the statutory presence of such property of the defendants within the state, and where such property was not the subject matter of litigation or in any way related to the underlying cause of action, the sequestered property failed to provide contact with the State sufficient to support jurisdiction of that state's courts over the defendant.

U.S.—*Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977).

12 U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014); *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 112 S. Ct. 2160, 119 L. Ed. 2d 394 (1992); *In re Western States Wholesale Natural Gas Antitrust Litigation*, 715 F.3d 716 (9th Cir. 2013), cert. granted, 134 S. Ct. 2899, 189 L. Ed. 2d 854 (2014) and aff'd, 135 S. Ct. 1591 (2015) and cert. denied, 135 S. Ct. 2048 (2015).

Ill.—*Flanders v. California Coastal Communities, Inc.*, 356 Ill. App. 3d 1113, 293 Ill. Dec. 483, 828 N.E.2d 793 (5th Dist. 2005).

N.C.—*Banc of America Securities LLC v. Evergreen Intern. Aviation, Inc.*, 169 N.C. App. 690, 611 S.E.2d 179 (2005).

S.D.—*Frankenfeld v. Crompton Corp.*, 2005 SD 55, 697 N.W.2d 378 (S.D. 2005).

Tenn.—*State v. NV Sumatra Tobacco Trading Co.*, 403 S.W.3d 726 (Tenn. 2013).

13 Cal.—*Yu v. Signet Bank/Virginia*, 69 Cal. App. 4th 1377, 82 Cal. Rptr. 2d 304 (1st Dist. 1999).

Mo.—*Peoples Bank v. Frazee*, 318 S.W.3d 121 (Mo. 2010).

Or.—*Robinson v. Harley-Davidson Motor Co.*, 354 Or. 572, 316 P.3d 287 (2013).

Tex.—*Nichols v. Bridges*, 163 S.W.3d 776 (Tex. App. Texarkana 2005).

14 U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 580, 62 L. Ed. 2d 490 (1980).

Nev.—*Dogra v. Liles*, 314 P.3d 952, 129 Nev. Adv. Op. No. 100 (Nev. 2013).

Pa.—*Com. ex rel. Pappert v. GPSC Yachts*, 871 A.2d 891 (Pa. Commw. Ct. 2005).

S.C.—*Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005).

Tex.—*Nichols v. Bridges*, 163 S.W.3d 776 (Tex. App. Texarkana 2005).

15 U.S.—*OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086 (10th Cir. 1998); *PVC Windoors, Inc. v. Babbittbay Beach Const., N.V.*, 598 F.3d 802, 76 Fed. R. Serv. 3d 133 (11th Cir. 2010).

Ariz.—*Rollin v. William V. Frankel & Co., Inc.*, 196 Ariz. 350, 996 P.2d 1254 (Ct. App. Div. 2 2000).

N.H.—*State v. North Atlantic Refining Ltd.*, 160 N.H. 275, 999 A.2d 396 (2010).

16 U.S.—*Calder v. Jones*, 465 U.S. 783, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984); *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161 (2d Cir. 2013); *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339 (11th Cir. 2013); *Carney v. Bill Head Trucking, Inc.*, 83 F. Supp. 2d 554 (E.D. Pa. 2000).

17 U.S.—*Curtis Pub. Co. v. Birdsong*, 360 F.2d 344 (5th Cir. 1966).

Rational interest

Virtually any rational state interest will be sufficient to surmount the initial due process barrier of a state interest sufficient to justify the exercise of the State's sovereign decisional authority with respect to a given transaction.

U.S.—*Alchemie Intern., Inc. v. Metal World, Inc.*, 523 F. Supp. 1039 (D.N.J. 1981).

18 U.S.—*Mountaire Feeds, Inc. v. Agro Impex, S. A.*, 677 F.2d 651 (8th Cir. 1982); *Chattanooga Corp. v. Klingler*, 528 F. Supp. 372 (E.D. Tenn. 1981).

Ariz.—*Coast to Coast Marketing Co., Inc. v. G & S Metal Products Co., Inc.*, 130 Ariz. 506, 637 P.2d 308 (Ct. App. Div. 2 1981).

Plaintiff cannot be only link of the nonresident with the forum

For the exercise of personal jurisdiction over a nonresident defendant to comport with the Due Process Clause, the plaintiff cannot be the only link between the defendant and the forum; rather, it is the defendant's conduct that must form the necessary connection with the forum state that is the basis for its jurisdiction over him.

U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014).

- 19 U.S.—*Monge v. RG Petro-Machinery (Group) Co. Ltd.*, 701 F.3d 598, 84 Fed. R. Serv. 3d 152 (10th Cir. 2012); *LSI Industries Inc. v. Hubbell Lighting, Inc.*, 232 F.3d 1369 (Fed. Cir. 2000).
La.—*Office Dimensions-Louisiana, Inc. v. King*, 718 So. 2d 1052 (La. Ct. App. 2d Cir. 1998).
Obligations of divorce decree
Even though the husband had not been a resident or transacted business in the state for a period of years, the obligations of a divorce decree based upon a stipulated judgment constituted continuing contacts with the state sufficient to satisfy due process for purposes of exercising personal jurisdiction over the husband in a wife's suit to enforce the decree.
Minn.—*Bjordahl v. Bjordahl*, 308 N.W.2d 817 (Minn. 1981).
- 20 U.S.—*Trans-Continental Inv. Corp., S. A. v. Bank of Commonwealth*, 500 F. Supp. 565 (C.D. Cal. 1980).
N.C.—*Telerent Leasing Corp. v. Equity Associates, Inc.*, 36 N.C. App. 713, 245 S.E.2d 229 (1978).
Or.—*Resorts Marketing, Inc. v. Zuckerman*, 52 Or. App. 589, 628 P.2d 770 (1981).
Wis.—*Nagel v. Crain Cutter Co.*, 50 Wis. 2d 638, 184 N.W.2d 876 (1971).
- 21 U.S.—*GAF Corp. v. Barclay Bros., Inc.*, 497 F. Supp. 539 (D.N.J. 1980).
- 22 Ark.—*Bowsher v. Digby*, 243 Ark. 799, 422 S.W.2d 671 (1968).
Idaho—*Tandy & Wood, Inc. v. Munnell*, 97 Idaho 142, 540 P.2d 804 (1975).
- 23 U.S.—*Riverside & Dan River Cotton Mills v. Menefee*, 237 U.S. 189, 35 S. Ct. 579, 59 L. Ed. 910 (1915).
Contacts held insufficient
Seller's two principals lacked sufficient minimum contacts with forum state where buyer's vague allegations of communications into Florida were not attributable to either principal, and communications were not connected to asserted claims.
U.S.—*Koch v. Royal Wine Merchants, Ltd.*, 907 F. Supp. 2d 1332 (S.D. Fla. 2012).
- 24 U.S.—*Jones v. Bankers Trust Co.*, 441 F. Supp. 317 (D. Minn. 1977).
Colo.—*Pioneer Astro Industries, Inc. v. District Court In and For El Paso County*, 193 Colo. 409, 566 P.2d 1067 (1977).

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

2. Jurisdiction and Venue

b. Nonresidents

§ 1938. Commission of tort

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3964, 3965(1) to 3968

Assertion of in personam jurisdiction over a nonresident under a long-arm statute upon the commission of a tort is sufficient to meet the jurisdictional requirements of due process even when the defendant has no other contact with the State.

Directing tortious activity at a forum can be enough to establish minimum contacts for due process purposes.¹ Assertion of in personam jurisdiction over a nonresident under a long-arm statute upon the commission of a tort is sufficient to meet the jurisdictional requirements of due process even when the defendant has no other contact with the State.²

If an action arises out of a nonresident defendant's contacts with the forum state, this implicates only specific personal jurisdiction,³ and courts use a three-pronged test in determining whether specific personal jurisdiction is constitutionally appropriate: (i) that the defendants "purposefully availed" themselves of the privileges of conducting activities in the forum, (ii) that the claim arises out of these activities, and finally (iii) that the exercise of jurisdiction is reasonable.⁴ If the defendant

has not purposefully availed itself of the privilege of conducting activities within the forum state, the fact that an injury resulted within that state is not alone sufficient to permit the exercise of jurisdiction over the defendant within the requirements of the Due Process Clause.⁵ However, due process is met if the activity of the defendant has a foreseeable injurious effect.⁶

CUMULATIVE SUPPLEMENT

Cases:

Trial court could exercise specific personal jurisdiction over non-resident manufacturer of medical device used to treat medical conditions in female pelvis under long arm statute in non-resident patient's action alleging design defect and failure to warn; patient claimed that her injuries resulted from characteristics of mesh, which was only part of device that remained in her body after surgery, manufacturer contracted for company in state to produce mesh, which involved manufacturer shipping its proprietary filament to company's facilities to be knit according to manufacturer's detailed specifications, before being shipped back to manufacturer, process necessitated site visits by manufacturer's employees, and manufacturer was substantially and directly involved in production of mesh in state. 42 Pa. Cons. Stat. Ann. § 5322. *Hammons v. Ethicon, Inc.*, 240 A.3d 537 (Pa. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Tannenbaum v. Brink*, 119 F. Supp. 2d 505 (E.D. Pa. 2000).
- 2 U.S.—*Milosavljevic v. Brooks*, 55 F.R.D. 543 (N.D. Ind. 1972); *Helder v. Whittenberg Liquidating Co.*, 522 F. Supp. 480 (E.D. Pa. 1981).
Me.—*Foye v. Consolidated Baling Mach. Co.*, 229 A.2d 196 (Me. 1967).
Defamation
That First Amendment considerations surrounding the law of libel require a greater showing of contact to satisfy the Due Process Clause than is necessary in asserting jurisdiction over other types of tortious activity does not mean that long-arm jurisdiction is never exercisable in a defamation case.
Ga.—*Bradlee Management Services, Inc. v. Cassells*, 249 Ga. 614, 292 S.E.2d 717 (1982).
Malicious interference in business relations
A section of an Arkansas long-arm statute authorizing service of process on a defendant "causing tortious injury within this state by an act or omission outside this state ..." authorized personal jurisdiction over a Colorado manufacturer and resident where the situs of the alleged tort of malicious interference in business relations of the holder of exclusive marketing rights from the manufacturer and the licensee of such holder was Arkansas, and since the defendants had carried on activities with the holder of exclusive marketing rights in Arkansas for a substantial period of time by soliciting sales, the exercise of jurisdiction did not violate the Due Process Clause.
U.S.—*Jeanway Industries, Inc. v. Knudson Mfg. Co., Inc.*, 533 F. Supp. 678 (W.D. Ark. 1981).
Negligence of shipper
A corporate shipper of wooden pallets which fell out of a railroad boxcar, injuring a customs inspector, had sufficient contacts with the State so that exertion of jurisdiction under a long-arm rule governing situations in which the defendant's negligence outside the state causes injury to a person inside the state satisfied the Due Process Clause.
U.S.—*Myers v. John Deere Ltd.*, 683 F.2d 270, 35 Fed. R. Serv. 2d 40 (8th Cir. 1982).
- 3 U.S.—*Aitken v. Communications Workers of America*, 496 F. Supp. 2d 653 (E.D. Va. 2007).
- 4 U.S.—*Aitken v. Communications Workers of America*, 496 F. Supp. 2d 653 (E.D. Va. 2007).
- 5 U.S.—*Abady v. Macaluso*, 90 F.R.D. 690 (E.D. Pa. 1981).

Alaska—[Jonz v. Garrett/Airesearch Corp.](#), 490 P.2d 1197 (Alaska 1971).

Ill.—[Hurletron Whittier, Inc. v. Barda](#), 82 Ill. App. 3d 443, 37 Ill. Dec. 838, 402 N.E.2d 840 (1st Dist. 1980).

Random or fortuitous contacts

A seller's on-line posting of to sell car created no particular or unique relationship to the forum state such that it could fairly be said that he purposefully availed himself of the privilege of acting within the state, and seller's single sale was a random, fortuitous, and attenuated contact with the State.

Ky.—[Hinnars v. Robey](#), 336 S.W.3d 891 (Ky. 2011).

U.S.—[Atlantic Tubing & Rubber Co. v. International Engraving Co.](#), 364 F. Supp. 787 (D.R.I. 1973).

Colo.—[Alliance Clothing Ltd. v. District Court for City and Denver County](#), 187 Colo. 400, 532 P.2d 351 (1975).

Mo.—[Murphree v. Baykowski](#), 615 S.W.2d 463 (Mo. Ct. App. E.D. 1981).

Signing of contract affecting out-of-state realty

Where an out-of-state law firm and lawyer, while representing a state corporation, allegedly coerced the president of the corporation to sign a contract designed to effect the legal rights of parties in a joint venture established to acquire, develop, improve, and operate real estate in the state; the partner of the law firm came to the state personally to inspect the property; and the law firm and lawyer had reason to anticipate that activities out of state might have an injurious effect in the state, due process was not affronted by the state court's maintaining jurisdiction over the law firm and lawyer under a long-arm statute on allegations that activities of the law firm and lawyer out of state constituted an intentional act which ripened into a tort upon the occurrence of damages in the state.

Colo.—[Jenner & Block v. District Court In and For City and County of Denver](#), 197 Colo. 184, 590 P.2d 964 (1979).

Foreseeability of harm from tortious emails

Jurisdiction over defendants met minimum contacts where nonresident defendants intentionally transmitted allegedly tortious emails to servers and recipients in the forum state.

U.S.—[Aitken v. Communications Workers of America](#), 496 F. Supp. 2d 653 (E.D. Va. 2007).

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§ 1939. Foreign corporations

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Generally, due process requirements are satisfied when in personam jurisdiction is asserted over a nonresident corporate defendant that has certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice or such that it is fair and reasonable to require the corporation to defend the particular suit.

The exercise of jurisdiction over a foreign corporation by a state court,¹ or by a federal court in a diversity action,² must not violate due process. Various statements have been made by the courts as to the factors to be considered in determining whether due process is satisfied in the assumption of jurisdiction over a foreign corporation.³ Generally, due process requirements are satisfied when in personam jurisdiction is asserted over a nonresident corporate defendant that has certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play⁴ or such that it is fair and reasonable to require the corporation to defend the particular suit.⁵

The Due Process Clause does not contemplate that a state may make binding a judgment against a corporate defendant with which the State has no contacts, ties, or relations.⁶ The test is qualitative rather than quantitative;⁷ jurisdiction on the basis of a single act is uniformly upheld.⁸ The foreign corporation need not be physically present in the forum state.⁹ However, the activities of a nonresident corporation which are a mere fortuitous circumstance do not constitute minimum contacts,¹⁰ and an estimate of the inconveniences which would result to a corporation by a trial away from its home or principal place of business is relevant to the determination of the minimum contacts which are necessary.¹¹

Whether due process is satisfied depends upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the Due Process Clause to insure.¹² It is essential in each case that there be some act by which the corporate defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.¹³ Nonetheless, when a corporate defendant who has purposefully directed its activities at the forum state seeks to defeat jurisdiction, it must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.¹⁴ In determining whether a corporate nonresident defendant is so far present in a state as to satisfy due process requirements, one necessarily looks to the in-state activities carried on in its behalf by those who are authorized to act for it.¹⁵

Generally, the jurisdictional contacts of a subsidiary corporation are not imputed to the parent for purposes of determining whether the exercise of personal jurisdiction over the parent comports with due process requirements.¹⁶ Constitutional due process requires that personal jurisdiction cannot be premised on corporate affiliation or stock ownership alone where corporate formalities are observed, and the parent does not exercise an unusually high degree of control over the subsidiary.¹⁷ However, if a resident subsidiary corporation is the alter ego of a nonresident corporate defendant, the subsidiary's contacts are those of the parent corporation's, and due process is satisfied.¹⁸

When a nonresident defendant is a corporation, the question whether jurisdiction may be constitutionally exercised over a defendant consistent with the Due Process Clause depends upon the circumstances of each particular case.¹⁹ Accordingly, under various facts and circumstances, defendant corporations have been held to have,²⁰ or not to have,²¹ sufficient minimum contacts with the forum state so as to satisfy due process requirements and support personal jurisdiction.

Burden of proof.

A plaintiff has the burden of demonstrating that the foreign corporation has sufficient minimal contacts with the forum state so as to make the assertion of in personam jurisdiction consonant with the principles of due process.²²

Libel.

First Amendment considerations surrounding the law of libel require a greater showing of contact of a corporation with a foreign state to satisfy due process than is necessary in asserting jurisdiction over other types of tortious activity.²³ However, where a publisher's general course of conduct in circulating a publication throughout a state is purposefully directed at the State and inevitably affects persons in the state, jurisdiction over a complaint based on such contacts satisfies the due process requirement.²⁴ A rule allowing a corporate publisher, aware of the possibility of resulting legal action, to print libelous matters directed at persons in distant localities to remain free from suit in such localities in spite of the pecuniary benefits gained in the very jurisdiction where it asserts it cannot be held legally accountable would not conform to the purposes behind the minimum contacts due process requirement.²⁵

CUMULATIVE SUPPLEMENT**Cases:**

The Fourteenth Amendment's Due Process Clause does not permit a State to hale an out-of-state corporation before its courts when the corporation is not at home in the State and the episode-in-suit occurred elsewhere. [U.S.C.A. Const.Amend. 14. BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549 \(2017\).](#)

The Fourteenth Amendment due process constraint on state jurisdiction over out-of-state corporations described in *Daimler AG v. Bauman* applies to all state-court assertions of general jurisdiction over nonresident defendants; the constraint does not vary with the type of claim asserted or business enterprise sued. [U.S.C.A. Const.Amend. 14. BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549 \(2017\).](#)

Corporation that was incorporated and headquartered in Alabama that operated online learning platform was not at home in Massachusetts, and thus corporation was not subject to general personal jurisdiction under Fourteenth Amendment Due Process Clause in former student's breach of contract action in Massachusetts, arising out of corporation's termination of student's online account; while student had moved to Massachusetts and asserted that he had been injured there, corporation's general business operations in Massachusetts were not so unusually substantial as to be fairly described as at home there, and even to the extent that corporation drew students away from educational institutions in Massachusetts, this was insufficient on its own to establish jurisdiction, and corporation maintained no physical presence and paid no taxes in Massachusetts. [U.S. Const. Amend. 14. Kuan Chen v. United States Sports Academy, Inc., 956 F.3d 45 \(1st Cir. 2020\).](#)

In action for breach of contract to sell interests in limited partnership, sellers did not purposefully avail themselves of privilege of conducting activities within Maine, and thus district court in Maine could not, under Due Process Clause, exercise personal jurisdiction over sellers; although sellers knew that purchaser was Maine entity, purchaser had reached out to sellers in Illinois to solicit the sale, sellers' obligations under agreement were contingent on someone else's action, such as general partner's decisions to make distributions or bring matters to vote, and sellers' actual contact with Maine was limited to sending three yearly partnership distributions into Maine, sending executed assignments into Maine, and sporadically collaborating with purchaser on tax issues. [U.S. Const. Amend. 5. LP Solutions LLC v. Duchossois, 907 F.3d 95 \(1st Cir. 2018\).](#)

Exercise of personal jurisdiction in Northern District of Texas over Texas limited liability company (LLC) that had business only of licensing and litigating its patents would have been reasonable and fair, as required for venue to be proper under due process clause in banks' declaratory judgment action against LLC, since LLC charged infringement and threatened litigation against banks residing and conducting business in Northern District, forum had obligation to resolve disputes involving its residents and businesses, and LLC did not argue that litigating in Northern District would be unduly burdensome or that any of other factors supported finding that jurisdiction would be unfair. [U.S. Const. Amend. 14; 28 U.S.C.A. § 2201. Jack Henry & Associates, Inc. v. Plano Encryption Technologies LLC, 910 F.3d 1199 \(Fed. Cir. 2018\).](#)

Construction management company, an Arizona limited liability company (LLC), purposefully availed itself of the benefits and protection of Idaho laws, such that exercise of personal jurisdiction over company in action for breach of contract comported with due process; company contracted with plaintiff after being notified of plaintiff's presence in Idaho and its desire to perform contractual duties there. [U.S. Const. Amend. 14. H2O Environmental Inc. v. Proimtu MMI, LLC, 397 P.3d 398 \(Idaho 2017\).](#)

Mississippi court's exercise of jurisdiction over foreign corporation in shareholder accounting action comported with traditional notions of fair play and substantial justice, and thus complied with due process; Mississippi had interest in regulating those conducting business within Mississippi, corporation gratuitously chose to produce documents in Mississippi when shareholder and others were willing to travel to California to inspect the documents, corporation demanded that shareholder and others submit to the jurisdiction of a Mississippi court for any disputes arising from a confidentiality agreement corporation drafted,

and shareholder, who was former resident of Mississippi, had an interest in obtaining relief and assessing the value of his investment in corporation. [U.S. Const. Amend. 14. Adara Networks Inc. v. Langston](#), 301 So. 3d 618 (Miss. 2020).

Chemical manufacturer that had mined a geological formation near a state line by injecting solution into caverns leading to Ohio land to dissolve and remove salt, purposefully availed itself of causing a consequence in Ohio, and thus exercise of personal jurisdiction over it did not violate due process, in action by oil and gas company for damage to their Ohio wells when caverns collapsed. [U.S. Const. Amend. 14. Triad Hunter, LLC v. Eagle Natrium, LLC](#), 2019-Ohio-940, 132 N.E.3d 1272 (Ohio Ct. App. 7th Dist. Monroe County 2019).

Under due process clause, Bermudian corporation was not subject to general jurisdiction in Texas, even though Texas-based companies owned Bermudian corporation's shares; corporation did not have principal place of business in Texas and had only limited contacts with Texas. [U.S. Const. Amend. 14. Searcy v. Parex Resources, Inc.](#), 496 S.W.3d 58 (Tex. 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Mo.—Wineteer v. Vietnam Helicopter Pilots Ass'n](#), 121 S.W.3d 277 (Mo. Ct. App. W.D. 2003).
Federal question
 The issue of jurisdiction pursuant to long-arm statutes poses a federal question of whether subsection of a nonresident corporation to the jurisdiction of state courts comports with federal due process.
[U.S.—In re Chinese Manufactured Drywall Products Liability Litigation](#), 742 F.3d 576 (5th Cir. 2014).
[Ala.—DeSotacho, Inc. v. Valnit Industries, Inc.](#), 350 So. 2d 447 (Ala. 1977).
- 2 [U.S.—Intermeat, Inc. v. American Poultry Inc.](#), 575 F.2d 1017, 23 U.C.C. Rep. Serv. 925 (2d Cir. 1978).
- 3 [Iowa—Hammond v. Florida Asset Financing Corp.](#), 695 N.W.2d 1 (Iowa 2005).
[Del.—Wright v. American Home Products Corp.](#), 768 A.2d 518 (Del. Super. Ct. 2000).
[Tex.—Dion Durrell & Associates, Inc. v. S.J. Camp & Co.](#), 138 S.W.3d 460 (Tex. App. Tyler 2004).
- 4 [U.S.—Helicopteros Nacionales de Colombia, S.A. v. Hall](#), 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984); [Anderson v. Dassault Aviation](#), 361 F.3d 449 (8th Cir. 2004); [In re Ski Train Fire in Kaprun, Austria on November 11, 2000](#), 342 F. Supp. 2d 207 (S.D. N.Y. 2004); [In re Etalco, Inc.](#), 273 B.R. 211 (B.A.P. 9th Cir. 2001).
[Ala.—Ex parte Excelsior Financial, Inc.](#), 42 So. 3d 96 (Ala. 2010).
[Mo.—Wineteer v. Vietnam Helicopter Pilots Ass'n](#), 121 S.W.3d 277 (Mo. Ct. App. W.D. 2003).
[N.Y.—Carpino v. National Store Fixtures Inc.](#), 275 A.D.2d 580, 712 N.Y.S.2d 684 (3d Dep't 2000).
[W. Va.—Easterling v. American Optical Corp.](#), 207 W. Va. 123, 529 S.E.2d 588 (2000).
Delivery of defective airplane
 Where an airplane sold to a company in Illinois was based in that state for a period of time prior to a fatal crash in Canada while en route to England; the pilots, Illinois residents, killed in that crash boarded the plane in Illinois; and the pecuniary loss resulting from the loss of income and moral training and superintendence of education occurred in Illinois, the foreign corporation which manufactured the airplane in Kansas had sufficient minimum contacts with Illinois to satisfy due process so as to afford the Illinois court jurisdiction over the manufacturer in wrongful death actions commenced against it by the administrators of the pilots' estates.
[Ill.—Braband v. Beech Aircraft Corp.](#), 51 Ill. App. 3d 296, 9 Ill. Dec. 684, 367 N.E.2d 118 (1st Dist. 1977), judgment aff'd, 72 Ill. 2d 548, 21 Ill. Dec. 888, 382 N.E.2d 252 (1978).
- 5 [U.S.—James v. Valvoline, Inc.](#), 159 F. Supp. 2d 544 (S.D. Tex. 2001).
[Utah—Mallory Engineering, Inc. v. Ted R. Brown & Associates, Inc.](#), 618 P.2d 1004 (Utah 1980).
Foreseeability as factor
 Although it is foreseeable that a product might travel to a forum state, such foreseeability is not a sufficient benchmark for personal jurisdiction under the Due Process Clause; the foreseeability that is critical to due

process analysis is not the mere likelihood that a product will find its way into the forum state, but rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there.

U.S.—*Monge v. RG Petro-Machinery (Group) Co. Ltd.*, 701 F.3d 598, 84 Fed. R. Serv. 3d 152 (10th Cir. 2012).

6 U.S.—*Rush v. Savchuk*, 444 U.S. 320, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 580, 62 L. Ed. 2d 490 (1980).

Ill.—*Spirek v. State Farm Mut. Auto. Ins. Co.*, 65 Ill. App. 3d 440, 21 Ill. Dec. 817, 382 N.E.2d 111 (1st Dist. 1978).

N.D.—*Jahner v. Jacob*, 252 N.W.2d 1 (N.D. 1977).

7 U.S.—*Anderson v. Dassault Aviation*, 361 F.3d 449 (8th Cir. 2004).

Ill.—*Riemer v. KSL Recreation Corp.*, 348 Ill. App. 3d 26, 283 Ill. Dec. 163, 807 N.E.2d 1004 (1st Dist. 2004).

8 U.S.—*Reilly v. P. J. Wolff and Sohne*, 374 F. Supp. 775 (D.N.J. 1974).

N.J.—*Moon Carrier v. Reliance Ins. Co.*, 153 N.J. Super. 312, 379 A.2d 517 (Law Div. 1977).

Tex.—*Arterbury v. American Bank & Trust Co.*, 553 S.W.2d 943 (Tex. Civ. App. Texarkana 1977).

9 U.S.—*Adams v. Guthy Renker Corp.*, 106 F. Supp. 2d 400 (D. Conn. 2000).

La.—*Bridges v. Autozone Properties, Inc.*, 900 So. 2d 784 (La. 2005).

10 U.S.—*Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981); *Branch Bank and Trust v. Engine Components, Inc.*, 394 F. Supp. 2d 859 (S.D. W. Va. 2005).

N.D.—*Hust v. Northern Log, Inc.*, 297 N.W.2d 429 (N.D. 1980).

Tex.—*Dennett v. First Continental Inv. Corp.*, 559 S.W.2d 384 (Tex. Civ. App. Dallas 1977).

Automobile accident

Where corporate defendants, an automobile wholesaler and retailer, carried on no activity whatsoever in Oklahoma and availed themselves of no privileges or benefits of Oklahoma law, the mere fortuitous circumstance that a single automobile sold in New York to New York residents happened to suffer an accident while passing through Oklahoma did not constitute "minimum contacts" with Oklahoma so as to permit Oklahoma courts to exercise jurisdiction consistently with due process under a state long-arm statute interpreted by Oklahoma courts as conferring jurisdiction to limits permitted by the United States Constitution.

U.S.—*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 580, 62 L. Ed. 2d 490 (1980).

11 U.S.—*Quasha v. Shale Development Corp.*, 667 F.2d 483 (5th Cir. 1982); *Western Union Telegraph Co. v. T. S. I., Ltd.*, 545 F. Supp. 329 (D.N.J. 1982).

N.H.—*Engineering Associates of New England, Inc. v. B & L Liquidating Corp.*, 115 N.H. 508, 345 A.2d 900 (1975).

12 U.S.—*Eddie Dassin, Inc. v. Darlene Knitwear, Inc.*, 387 F. Supp. 958 (D.P.R. 1974).

Cal.—*Cornell University Medical College v. Superior Court*, 38 Cal. App. 3d 311, 113 Cal. Rptr. 291 (1st Dist. 1974).

S.C.—*Jenkinson v. Murrow Bros. Seed Co., Inc.*, 272 S.C. 148, 249 S.E.2d 780 (1978).

Lease of equipment

The quality and nature of an Illinois corporation's activities in their entirety with respect to the lease of equipment to a Mississippi corporation was such that the relationship to Mississippi was not unilateral on the part of the Mississippi corporation, and there was conduct by the Illinois corporation in Mississippi in connection with the equipment lease which was sufficient to satisfy due process.

U.S.—*Kaydee Metal Products Corp. v. Sintex Mach. Tool Mfg. Corp.*, 342 F. Supp. 902 (N.D. Miss. 1972).

13 U.S.—*English v. 21st Phoenix Corp.*, 590 F.2d 723, 26 Fed. R. Serv. 2d 1037 (8th Cir. 1979); *A. J. Cunningham Packing Corp. v. Florence Beef Co.*, 529 F. Supp. 515 (D. Mass. 1982).

Ind.—*Griese-Traylor Corp. v. Lemmons*, 424 N.E.2d 173 (Ind. Ct. App. 1981).

N.Y.—*Gladding Corp. v. Balco-Pedrick Parts Corp.*, 76 A.D.2d 1, 429 N.Y.S.2d 940 (4th Dep't 1980).

Manufacturer of valve stems

Assuming that a Japanese manufacturer of valve stems for tire tubes manufactured in Taiwan was aware that some valves would be incorporated into tire tubes sold in California, California's exertion of personal jurisdiction over the Japanese manufacturer would exceed the limits of due process, absent action by the manufacturer to purposefully avail itself of the California market.

U.S.—*Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987).

Del.—*AeroGlobal Capital Management, LLC v. Cirrus Industries, Inc.*, 871 A.2d 428 (Del. 2005).

D.C.—*Frank E. Basil, Inc. v. Guardino*, 424 A.2d 70 (D.C. 1980).

U.S.—*Purdue Research Foundation v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 179 Ed. Law Rep. 192 (7th Cir. 2003); *Gerling Global Reinsurance Corp. of America v. Nelson*, 123 F. Supp. 2d 1298 (N.D. Fla. 2000), *aff'd*, 267 F.3d 1228 (11th Cir. 2001).

U.S.—*Andresen v. Diorio*, 349 F.3d 8 (1st Cir. 2003); *Morris Material Handling, Inc. v. KCI Konecranes PLC*, 334 F. Supp. 2d 1118 (E.D. Wis. 2004).

U.S.—*Epps v. Stewart Information Services Corp.*, 327 F.3d 642 (8th Cir. 2003).

Cal.—*Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523, 99 Cal. Rptr. 2d 824 (5th Dist. 2000).

U.S.—*Myers v. Casino Queen, Inc.*, 689 F.3d 904 (8th Cir. 2012); *Synopsys, Inc. v. Ricoh Company, Ltd.*, 343 F. Supp. 2d 883 (N.D. Cal. 2003); *Elandia Intern., Inc. v. Ah Koy*, 690 F. Supp. 2d 1317 (S.D. Fla. 2010); *George v. Uponor Corp.*, 988 F. Supp. 2d 1056 (D. Minn. 2013).

Tex.—*Moncrief Oil Intern. Inc. v. OAO Gazprom*, 414 S.W.3d 142 (Tex. 2013); *Allianz Risk Transfer (Bermuda) Ltd. v. S.J. Camp & Co.*, 117 S.W.3d 92 (Tex. App. Tyler 2003).

Negotiations with target company

The exercise of personal jurisdiction over a Pennsylvania company and its officers pursuant to a Vermont long-arm statute would not violate due process; the company and officer engaged in active negotiations with a Vermont target company regarding the purchase of the target's assets, the officers of the Pennsylvania company came to the target's Vermont office to discuss the acquisition and purposefully availed themselves of the opportunity to do business in Vermont, and the Pennsylvania company and an officer allegedly engaged in intentional misrepresentation and concealment of financial data to the target, knowing that the brunt of the harm would be sustained in Vermont.

U.S.—*Country Home Products, Inc. v. Schiller-Pfeiffer, Inc.*, 350 F. Supp. 2d 561 (D. Vt. 2004).

U.S.—*Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984); *In re Roman Catholic Diocese of Albany, New York, Inc.*, 745 F.3d 30 (2d Cir. 2014); *Beydoun v. Wataniya Restaurants Holding, Q.S.C.*, 768 F.3d 499 (6th Cir. 2014); *Martinez v. Aero Caribbean*, 764 F.3d 1062 (9th Cir. 2014), *cert. denied*, 2015 WL 195304 (U.S. 2015); *Continental Cas. Co. v. Southern Co.*, 284 F. Supp. 2d 1118 (N.D. Ill. 2003); *In re Chocolate Confectionary Antitrust Litigation*, 602 F. Supp. 2d 538 (M.D. Pa. 2009), *subsequent determination*, 641 F. Supp. 2d 367, 74 Fed. R. Serv. 3d 357 (M.D. Pa. 2009). Minn.—*Juelich v. Yamazaki Mazak Optonics Corp.*, 670 N.W.2d 11 (Minn. Ct. App. 2003), *aff'd*, 682 N.W.2d 565 (Minn. 2004).

Placing informational website on Internet

A catamaran broker's conduct of placing an informational website on the Internet did not amount to sufficient contacts with the forum such that, even if jurisdiction was proper under a long-arm statute, asserting personal jurisdiction over the catamaran broker would violate the Due Process Clause; the catamaran broker did not conduct business over the Internet, nor did it solicit business over the Internet.

U.S.—*Miller v. Berman*, 289 F. Supp. 2d 1327 (M.D. Fla. 2003).

Suit against tobacco companies

Texas did not have an interest in adjudicating a suit to recoup health care costs brought by a Brazilian state against U.S. tobacco companies for purposes of due process analysis for personal jurisdiction; the parties were not Texas residents, the conduct from which the claims arose did not occur in Texas, the products were not manufactured in Texas, and no Texas property interest was at stake.

Tex.—*State of Rio De Janeiro of Federative Republic of Brazil v. Philip Morris Inc.*, 143 S.W.3d 497 (Tex. App. Beaumont 2004).

Corporate contacts merely fortuitous

In-flight phone conversation between representative of Louisiana aircraft maintenance company and pilot while plane was in flight between West Virginia and New Hampshire did not establish minimum contacts with West Virginia necessary to support exercise of personal jurisdiction over the maintenance company in West Virginia in action arising from plane's crash; even if pilot and the plane were located in West Virginia at the time of the conversation, their presence in West Virginia was merely fortuitous as the plane was en route to New Hampshire.

- 22 U.S.—[Branch Bank and Trust v. Engine Components, Inc.](#), 394 F. Supp. 2d 859 (S.D. W. Va. 2005).
- 23 U.S.—[Thompson v. Kiekhaefer](#), 372 F. Supp. 715 (D. Minn. 1973).
- 24 U.S.—[New York Times Co. v. Connor](#), 365 F.2d 567 (5th Cir. 1966).
- 25 U.S.—[Keeton v. Hustler Magazine, Inc.](#), 465 U.S. 770, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984).
- U.S.—[Curtis Pub. Co. v. Golino](#), 383 F.2d 586 (5th Cir. 1967).

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

2. Jurisdiction and Venue

b. Nonresidents

§ 1940. Foreign corporations—Business activity in forum state

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

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Systematic business activity in a state may subject a nonresident corporation to jurisdiction in the forum state in accordance with due process considerations even though the cause of action sought to be enforced does not arise out of the corporation's activities within the state.

Systematic business activity in a state may subject a nonresident corporation to jurisdiction in the forum state in accordance with due process considerations¹ even though the cause of action sought to be enforced does not arise out of the corporation's activities within the state.² Minimum contacts with the State, such as will satisfy due process requirements for exercise of personal jurisdiction over a foreign corporation, are established where the foreign corporation has actually qualified under state law to transact business in the state and has appointed a resident agent for service of process.³

The forum state does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the

forum state.⁴ However, the mere foreseeability that a product will be used in the forum does not of itself justify an exercise of jurisdiction under the Due Process Clause.⁵

Insurer.

The act of insuring a person who must travel to a nearby state is insufficient to find that the insurer purposely directed its activities at the forum state.⁶

CUMULATIVE SUPPLEMENT

Cases:

Where a corporation directly targets residents in the forum state in an ongoing effort to further a business relationship, and achieves its purpose, it may not necessarily be unreasonable to subject that corporation to personal jurisdiction in the forum state, under the Due Process Clause, when the efforts lead to a tortious result, even though the corporation's actions may not have proximately caused it. [U.S. Const. Amend. 14. Nandjou v. Marriott International, Inc., 985 F.3d 135 \(1st Cir. 2021\)](#).

Activities of non-resident chemical producer that was incorporated in New York and had its principal place of business in Texas showing that it conducted significant business in Florida were not sufficient for federal district court in Florida to exercise general personal jurisdiction over it in manner consistent with due process; producer had distributor in Florida, along with several Florida customers, it once discussed holding seminar in Florida to combat public's concerns about health effects of asbestos, it previously had been registered to do business in Florida and it maintained agent to receive service of process there, and it built plant in state and discussed building shipping terminal there. [U.S. Const. Amend. 14. Waite v. All Acquisition Corp., 901 F.3d 1307 \(11th Cir. 2018\)](#).

Generic drug manufacturer had sufficient minimum contacts with Delaware to establish district court's specific personal jurisdiction over manufacturer as required by Fourteenth Amendment's Due Process Clause in patent owners' infringement actions alleging that manufacturer sought permission through abbreviated new drug applications (ANDA) to manufacture and market infringing drugs; manufacturer took costly, significant step of applying for approval to engage in future activities that would be purposefully directed at Delaware, if generic drugs were infringing, Delaware sales would be acts committed in state that were wrongful and would concretely injure patent owners in state by displacing Delaware sales and likely lowering price they could charge, manufacturer registered to do business in Delaware and appointed an agent to accept service of process, and manufacturer indicated in certificate of registration that it intended to engage in pharmaceutical manufacturing, distribution, and sales in Delaware. [U.S.C.A. Const. Amend. 14; 35 U.S.C.A. § 271\(e\)\(2\). Acorda Therapeutics Inc. v. Mylan Pharmaceuticals Inc., 817 F.3d 755 \(Fed. Cir. 2016\)](#).

District court's exercise of specific jurisdiction over German crane manufacturer in product liability action in Florida would not offend traditional notions of fair play and substantial justice, even though it involved inconvenience to manufacturer as a non-resident litigant, since resolution in a single action of each claim by and against each party effected a singular preservation of resources. [Brown v. Bottling Group, LLC, 159 F. Supp. 3d 1308 \(M.D. Fla. 2016\)](#).

Exercise of personal jurisdiction over principals of Colorado hemp seller, who were all Colorado residents, comported with traditional notions of fair play and substantial justice, for purposes of determination whether specific jurisdiction over principals satisfied due process in Ohio hemp purchaser's action alleging seller and its principals failed to cure deficient hemp sold to purchaser, despite purchaser's notification of deficiency and seller's and principals' response indicating that they would investigate and remedy deficiency; negotiation of business agreements with purchaser indicated that principals availed themselves of laws of Ohio, and fraud claims against principals arose from their negotiation of those agreements and their

obligations under those agreements. [U.S. Const. Amend. 14. Commodigy OG Vegas Holdings LLC v. ADM Labs](#), 417 F. Supp. 3d 912 (N.D. Ohio 2019).

Trial court's assertion of specific personal jurisdiction over nonresident buyer who ordered seed from seller in Indiana and traveled to Indiana to pick up purchased seed did not offend traditional notions of fair play and substantial justice and thus did not violate due process clause in seller's action alleging failure to pay for seed; buyer lived less than 20 miles from courthouse, and it was not an imposition for buyer to travel to Indiana to pick up purchase. [U.S. Const. Amend. 14. Walters v. Lima Elevator Company, Inc.](#), 84 N.E.3d 1218 (Ind. Ct. App. 2017).

Exercise of personal jurisdiction over representative of Chinese potential investors in oil and gas development project did not offend traditional notions of fair play and substantial justice in action brought by business engaged in developing and operating oil and gas assets, in which business alleged breach of contract, fraud, and tortious interference; representative had traveled to Texas from China on several occasions, and Texas had significant interest in resolving claims for torts committed in Texas against a Texas entity. [U.S. Const. Amend. 14. Yujie Ren v. ANU Resources, LLC](#), 502 S.W.3d 840 (Tex. App. Houston 14th Dist. 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S.—KM Enterprises, Inc. v. Global Traffic Technologies, Inc.](#), 725 F.3d 718 (7th Cir. 2013); [Gorman v. Ameritrade Holding Corp.](#), 293 F.3d 506, 52 Fed. R. Serv. 3d 869 (D.C. Cir. 2002); [Sportrust Associates Intern., Inc. v. Sports Corp.](#), 304 F. Supp. 2d 789 (E.D. Va. 2004).
[Tex.—Moncrief Oil Intern. Inc. v. OAO Gazprom](#), 414 S.W.3d 142 (Tex. 2013).
Consent to jurisdiction
Where a foreign insurer consented to the State's assertion of jurisdiction by voluntarily complying with statutes establishing requirements to do business in the state, assertion of in personam jurisdiction over the insurer in a garnishment action as an incident to authorization to do business in the state would not violate due process.
[Pa.—Bianco v. Concepts 100, Inc.](#), 291 Pa. Super. 458, 436 A.2d 206 (1981).
- 2 [U.S.—Wilkerson v. Fortuna Corp.](#), 554 F.2d 745 (5th Cir. 1977); [White-Evans Mfrs., Inc. v. Elevator Sales & Service](#), 543 F. Supp. 398 (E.D. Pa. 1982).
[Me.—Labbe v. Nissen Corp.](#), 404 A.2d 564 (Me. 1979).
[Wash.—Crose v. Volkswagenwerk Aktiengesellschaft](#), 88 Wash. 2d 50, 558 P.2d 764 (1977).
Jurisdiction as not limited
The Due Process Clause does not limit state court jurisdiction solely to cases where the contract was to be performed in the state, or the tort was committed in the state.
[Iowa—Universal Cooperatives, Inc. v. Tasco, Inc.](#), 300 N.W.2d 139 (Iowa 1981).
- 3 [Fla.—Junction Bit & Tool Co. v. Institutional Mortg. Co.](#), 240 So. 2d 879 (Fla. 4th DCA 1970).
- 4 [U.S.—World-Wide Volkswagen Corp. v. Woodson](#), 444 U.S. 286, 100 S. Ct. 580, 62 L. Ed. 2d 490 (1980); [In re Chinese-Manufactured Drywall Products Liability Litigation](#), 753 F.3d 521 (5th Cir. 2014); [In re Chinese Manufactured Drywall Products Liability Litigation](#), 742 F.3d 576 (5th Cir. 2014); [Clune v. Alimak AB](#), 233 F.3d 538 (8th Cir. 2000); [Levin v. Harned](#), 304 F. Supp. 2d 136 (D. Mass. 2003).
[Alaska—Volkswagenwerk, A. G. v. Klippan, GmbH](#), 611 P.2d 498 (Alaska 1980).
"Stream of commerce plus" test for defective products sold in forum state
The "stream of commerce plus" test is used to evaluate jurisdiction over a manufacturer, and this requires that it be both foreseeable that distribution channels will sweep the product into the forum state plus additional conduct indicating an intent or purpose to serve the market in the forum state.

U.S.—*Daimler AG v. Bauman*, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014); *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939 (4th Cir. 1994); *In re Chinese Manufactured Drywall Products Liability Litigation*, 742 F.3d 576 (5th Cir. 2014); *Williams v. Romarm, SA*, 756 F.3d 777 (D.C. Cir. 2014).

5 U.S.—*Pervasive Software Inc. v. Lexware GmbH & Co. KG*, 688 F.3d 214 (5th Cir. 2012); *Shaw v. American Cyanamid Co.*, 534 F. Supp. 527 (D. Conn. 1982).

Utah—*Gardner v. SPX Corp.*, 2012 UT App 45, 272 P.3d 175 (Utah Ct. App. 2012).

6 Neb.—*Brunkhardt v. Mountain West Farm Bureau Mut. Ins. Co.*, 269 Neb. 222, 691 N.W.2d 147 (2005).

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16D C.J.S. Constitutional Law § 1941

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

3. Parties

§ 1941. Adjudication of rights of parties not before court

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3881, 3953, 3972 to 3979

As a general rule, a court may not make a binding adjudication of the rights of parties not before it.

In keeping with due process, it is not within the power of any tribunal to make a binding adjudication of the rights of parties not before it.¹ Thus, due process requires the joinder of all necessary or indispensable parties to an action,² including the identification and joinder of all ascertainable persons with an interest in real property.³ For there to be a valid judgment, there must be no question about the identity of a person sued under an assumed or trade name,⁴ and there must be strict compliance with procedures with regard to naming an unidentified defendant, based on the defendant's due process rights.⁵

Due process is not denied when a person or entity is excluded as a party from a proceeding solely because of a failure to comply with procedural requirements.⁶ The withdrawal of a party does not affect other parties' due process rights where the withdrawing person does not assert any rights, and the withdrawal does not affect the status of any other claimant.⁷

Joinder under a rule of civil procedure may not violate a party's due process rights, and the party must be served and given the opportunity to respond.⁸

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Footnotes

- 1 U.S.—[Hansberry v. Lee](#), 311 U.S. 32, 61 S. Ct. 115, 85 L. Ed. 22, 132 A.L.R. 741 (1940).
Fla.—[Moretto v. Staub](#), 370 So. 2d 1220 (Fla. 3d DCA 1979).
Ga.—[Day v. Hatton](#), 210 Ga. 749, 83 S.E.2d 6 (1954).
Idaho—[Mays v. District Court of Sixth Judicial Dist. in and for Butte County](#), 34 Idaho 200, 200 P. 115 (1921).
Ill.—[St. James Dormitory, Inc. v. Site, Inc.](#), 53 Ill. App. 3d 120, 11 Ill. Dec. 321, 368 N.E.2d 929 (5th Dist. 1977).
Mont.—[Mitchell v. McDonald](#), 114 Mont. 292, 136 P.2d 536 (1943).
N.H.—[Litchfield v. Pfeffer](#), 116 N.H. 485, 363 A.2d 413, 20 U.C.C. Rep. Serv. 418 (1976).
S.C.—[Jeffords v. Hall](#), 276 S.C. 271, 277 S.E.2d 703 (1981).
- 2 Conn.—[Hilton v. City of New Haven](#), 233 Conn. 701, 661 A.2d 973 (1995).
Ill.—[Downers Grove Estates Fire Protection Dist. v. Village of Downers Grove](#), 86 Ill. App. 3d 1089, 42 Ill. Dec. 183, 408 N.E.2d 761 (2d Dist. 1980).
Miss.—[TXG Intrastate Pipeline Co v. Grossnickle](#), 716 So. 2d 991 (Miss. 1997).
N.D.—[Cudworth v. Cudworth](#), 312 N.W.2d 331 (N.D. 1981).
As to joinder of parties needed for just adjudication under the Federal Rules, see [C.J.S., Federal Civil Procedure § 142](#).
As to necessary and indispensable parties, generally, see [C.J.S., Parties §§ 4, 5](#).
Joinder not compulsory
No due process violation resulted from a court's failure to rule on a motion for joinder of a party until the conclusion of a trial where joinder was not compulsory.
N.D.—[Matter of Estate of Murphy](#), 554 N.W.2d 432 (N.D. 1996).
- 3 Colo.—[Lobato v. Taylor](#), 70 P.3d 1152 (Colo. 2003), as modified on denial of reh'g, (June 16, 2003).
Okla.—[Chickasaw Telephone Co. v. Drabek](#), 1996 OK 76, 921 P.2d 333 (Okla. 1996).
Parties to mechanics' lien action
Va.—[Walt Robbins, Inc. v. Damon Corp.](#), 232 Va. 43, 348 S.E.2d 223 (1986).
- 4 Ala.—[Ex parte CTF Hotel Management Corp.](#), 719 So. 2d 205 (Ala. 1998).
- 5 Haw.—[Aquarian Foundation v. Association of Apartment Owners of Waikiki Park Heights](#), 98 Haw. 134, 44 P.3d 285 (2001).
- 6 Ohio—[Lakeside Ave. L.P. v. Cuyahoga Cty. Bd. of Revision](#), 85 Ohio St. 3d 125, 1999-Ohio-257, 707 N.E.2d 472 (1999).
- 7 Idaho—[In re SRBA Case No. 39576](#), 128 Idaho 246, 912 P.2d 614 (1995).
- 8 Idaho—[Consolidated AG of Curry, Inc. v. Rangen, Inc.](#), 128 Idaho 228, 912 P.2d 115 (1996).
As to due process rights with regard to process, see §§ 1950 et seq.

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16D C.J.S. Constitutional Law § 1942

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

3. Parties

§ 1942. Representation

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3881, 3953, 3972 to 3979

There is an exception to the rule that a party must be named to be bound by a judgment in personam where that person's interests are represented.

An exception to the principle of due process that a person is not bound by a judgment in personam in litigation in which that person is not designated as a party¹ is recognized when, in certain limited circumstances, that person's interests are adequately represented by another party with the same interests or where a special remedial scheme exists expressly foreclosing successive litigation by nonlitigants as in bankruptcy or probate.² Thus, it is competent for a legislature, in the interest of justice, to provide that in certain cases, the rights of persons may be affected in proceedings to which they are not made parties in person but by representation,³ such as where a corporation represents the interests of its stockholders,⁴ a de facto corporation represents the individual incorporators,⁵ or a personal representative of an estate represents the surviving spouse and heirs.⁶ The presumption that an attorney has the authority to appear on behalf of a party does not violate due process.⁷ Furthermore, if a person was a party to the principal proceeding in which his or her rights were adjudicated, the fact that the person was not also a party to some connected proceeding will not constitute a denial of due process.⁸ Due process is similarly not violated by holding an automobile

insurer liable for uninsured or underinsured motorist benefits without it having been named a party in the personal injury suit against the underinsured driver, where the insurer received notice of the suit and an opportunity to defend, because an insurer has no right to control the defense of the underlying suit and is liable when a verdict is rendered against the underinsured driver.⁹

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Footnotes

- 1 § 1941.
- 2 U.S.—*Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 119 S. Ct. 2295, 144 L. Ed. 2d 715, 43 Fed. R. Serv. 3d 691 (1999).
- 3 U.S.—*Kersh Lake Drainage Dist. of Jefferson, Lincoln and Desha Counties v. Johnson*, 309 U.S. 485, 60 S. Ct. 640, 84 L. Ed. 881, 128 A.L.R. 386 (1940).
- 4 N.D.—*Baird v. Rask*, 60 N.D. 432, 234 N.W. 651 (1931).
Pa.—*Eiffert v. Pennsylvania Central Brewing Co.*, 141 Pa. Super. 543, 15 A.2d 723 (1940).
- 5 U.S.—*New Orleans Debenture Redemption Co. of Louisiana v. State of Louisiana*, 180 U.S. 320, 21 S. Ct. 378, 45 L. Ed. 550 (1901).
- 6 U.S.—*McCaughey v. Lyall*, 224 U.S. 558, 32 S. Ct. 602, 56 L. Ed. 883 (1912).
Ga.—*Moore v. Moore*, 255 Ga. 308, 336 S.E.2d 804 (1985).
- 7 Ala.—*Kingvision Pay-Per-View, Ltd. v. Ayers*, 886 So. 2d 45 (Ala. 2003).
- 8 Ill.—*Equitable Cas. Underwriters v. Industrial Commission*, 322 Ill. 462, 153 N.E. 685 (1926).
Ind.—*TeWalt v. TeWalt*, 421 N.E.2d 415 (Ind. Ct. App. 1981).
- 9 W. Va.—*Marshall v. Saseen*, 192 W. Va. 94, 450 S.E.2d 791 (1994).

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16D C.J.S. Constitutional Law § 1943

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

3. Parties

§ 1943. Children; guardians

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3881, 3953, 3972 to 3979

Due process does not require that a guardian ad litem be appointed or that children have a right to intervene in their parents' divorce case.

The absence of a requirement that a guardian ad litem be appointed for an incompetent does not offend due process, in the sense of making the resulting judgment void.¹ Accordingly, the failure to appoint a guardian ad litem to represent a minor before court approval of a settlement accepted by the child's parents does not automatically establish a due process violation.²

Intervention by minor children as parties in their parents' divorce action, with an attorney of their own choice, is not required by procedural due process, despite the children's claim that their custodial preference could not be advanced by a guardian ad litem, whose custody recommendations were contrary to their wishes, since, among other reasons, their attorney's narrow focus might increase the likelihood that the court could make a custody determination that was not in their best interest.³

Due process requires that a child be a party to a paternity action whether represented by a guardian or the State.⁴

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Footnotes

- 1 Fla.—[Polk v. Chase Nat. Co.](#), 120 Fla. 243, 162 So. 521 (1935).
- 2 Fla.—[Lopez v. Variety Children's Hosp.](#), 600 So. 2d 506 (Fla. 3d DCA 1992).
- 3 Me.—[Miller v. Miller](#), 677 A.2d 64 (Me. 1996).
- 4 Wash.—[State v. Santos](#), 104 Wash. 2d 142, 702 P.2d 1179, 70 A.L.R.4th 1021 (1985).

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16D C.J.S. Constitutional Law § 1944

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

3. Parties

§ 1944. Class actions

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3981 to 3983

In a class action, due process requires that absent class members be fairly and adequately represented, to be bound by the judgment.

In a class action, due process requires that absent class members be fairly and adequately represented¹ to be bound by the judgment.² For a party to fairly and adequately protect the interests of a class, due process requires that the party not hold interests that conflict with those of the class.³ In addition, for the purpose of determining whether representation by the named plaintiff will afford due process to other members of the class, the attorney representing the class must be qualified, experienced, and generally able to conduct the litigation.⁴ Where a class is adequately represented, and where there is no conflict of interest between members of a class, a class action judgment binding on all the members does not offend due process.⁵ However, class members whose interests are antagonistic in fact to, or even potentially conflicting with, the interests of the ostensibly representative parties are not bound, consistent with the requirements of due process, to an adjudication taken in their name.⁶ Therefore, the representation of absent class members does not comport with due process where incentive payments to the

class representatives provided an economic benefit far greater than the fruits of a settlement, and the representatives' economic interests required them to support the settlement irrespective of how other class members were treated.⁷

Because the parties' due process rights are implicated in the class certification process, each prerequisite for certification must be fully established.⁸ Absent class members' rights are protected if the certifying court follows appropriate procedures, which are subject to direct review by an appellate court.⁹ For instance, the definition of a proposed class implicates due process rights.¹⁰ A defendant in a class action has a due process right to secure a determination of the issues relating to the suitability of the action as a class matter prior to the determination of the merits of the case,¹¹ to ensure that the litigation will comply with due process and achieve a final binding resolution of the dispute.¹² The criteria used to determine due process are the same for both plaintiff and defendant classes but are more easily applied to plaintiff than to defendant class actions.¹³

The Supreme Court has noted, when ruling on the propriety of using a class action to aggregate monetary claims against a settlement fund, that "mandatory" class actions, where adjudications with respect to individual class members would create a risk of impairing or impeding the ability of absent class members to protect their interests, implicate the due process principle that one is not bound by a judgment in personam in a litigation in which one is not designated as a party or to which one has not been made a party by service of process.¹⁴ Constitutional due process also requires that absent plaintiffs be given the opportunity to opt out of a class action,¹⁵ unless the action is for predominantly equitable relief,¹⁶ although it has also been said that even in class actions for declaratory or injunctive relief, due process may require that a right to opt out be given to class members who seek monetary damages under any theory.¹⁷ Moreover, due process requires that class actions not be used to diminish the substantive rights of any party to the litigation.¹⁸

Shareholder's derivative suit.

Due process demands that a nominal plaintiff in a shareholder's derivative suit be free of any interest that potentially influences the representative's conduct of the litigation in a manner inconsistent with the interests of the remaining shareholders.¹⁹

CUMULATIVE SUPPLEMENT

Cases:

Fishermen received adequate notice or an opportunity to be heard on the issue of their compliance with pretrial order requiring unnamed class members to have standing to recover punitive damages under maritime law, and thus their due process rights were not violated by requirement that they comply with that pretrial order; fishermen had numerous opportunities to comply with, object to, or otherwise challenge the compliance requirement before their claims were denied by the Claims Administrator, but they failed to do so. [U.S. Const. Amend. 5. In re Deepwater Horizon, 934 F.3d 434 \(5th Cir. 2019\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S.—Kerney v. Fort Griffin Fandangle Ass'n, Inc., 624 F.2d 717, 30 Fed. R. Serv. 2d 79 \(5th Cir. 1980\); Dosier v. Miami Valley Broadcasting Corp., 656 F.2d 1295, 8 Fed. R. Evid. Serv. 133 \(9th Cir. 1981\). Colo—Jahn ex rel. Jahn v. ORCR, Inc., 92 P.3d 984 \(Colo. 2004\).](#)

- Del.—*In re Celera Corp. Shareholder Litigation*, 59 A.3d 418 (Del. 2012); *MCA, Inc. v. Matsushita Elec. Indus. Co., Ltd.*, 785 A.2d 625 (Del. 2001).
- Ill.—*Gaffney v. Shell Oil Co.*, 19 Ill. App. 3d 987, 312 N.E.2d 753 (1st Dist. 1974).
- Ind.—*Kimes v. City of Gary*, 224 Ind. 294, 66 N.E.2d 888 (1946).
- Mo.—*State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729 (Mo. 2004).
- N.C.—*English v. Holden Beach Realty Corp.*, 41 N.C. App. 1, 254 S.E.2d 223 (1979).
- S.C.—*Hospitality Management Associates, Inc. v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611 (2004).
- 2 U.S.—*Susman v. Lincoln American Corp.*, 561 F.2d 86, 24 Fed. R. Serv. 2d 6 (7th Cir. 1977).
- Del.—*MCA, Inc. v. Matsushita Elec. Indus. Co., Ltd.*, 785 A.2d 625 (Del. 2001).
- Ill.—*Barliant v. Follett Corp.*, 74 Ill. 2d 226, 23 Ill. Dec. 522, 384 N.E.2d 316 (1978).
- Mo.—*State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729 (Mo. 2004).
- 3 U.S.—*Alameda Oil Co. v. Ideal Basic Industries, Inc.*, 326 F. Supp. 98 (D. Colo. 1971).
- 4 Ill.—*Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 13 Ill. Dec. 699, 371 N.E.2d 634 (1977).
- 5 U.S.—*Management Television Systems, Inc. v. National Football League*, 52 F.R.D. 162 (E.D. Pa. 1971).
- 6 U.S.—*Phillips v. Klassen*, 502 F.2d 362, 18 Fed. R. Serv. 2d 1021 (D.C. Cir. 1974).
- Ill.—*Newberry Library v. Board of Ed. of City of Chicago*, 387 Ill. 85, 55 N.E.2d 147 (1944).
- Ind.—*Kimes v. City of Gary*, 224 Ind. 294, 66 N.E.2d 888 (1946).
- 7 Vt.—*State v. Homeside Lending, Inc.*, 175 Vt. 239, 2003 VT 17, 826 A.2d 997 (2003).
- 8 Ala.—*Ex parte Mercury Finance Corp. of Alabama*, 715 So. 2d 196 (Ala. 1997).
- 9 S.C.—*Hospitality Management Associates, Inc. v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611 (2004).
- 10 Tex.—*Ford Motor Co. v. Sheldon*, 22 S.W.3d 444 (Tex. 2000).

Persons claiming consequential damages

When certifying a class of personal computer buyers seeking declaratory relief based on a manufacturer's refusal to act on grounds generally applicable to the class, a trial court should consider that the inclusion of buyers who suffered consequential damages could violate due process where the representatives disclaimed those damages for the manufacturer's alleged breach of warranty.

- Tex.—*Compaq Computer Corp. v. Lapray*, 135 S.W.3d 657, 53 U.C.C. Rep. Serv. 2d 483 (Tex. 2004).
- 11 Cal.—*Rose v. City of Hayward*, 126 Cal. App. 3d 926, 179 Cal. Rptr. 287 (1st Dist. 1981).
- 12 Mo.—*State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729 (Mo. 2004).
- 13 Ill.—*Gaffney v. Shell Oil Co.*, 19 Ill. App. 3d 987, 312 N.E.2d 753 (1st Dist. 1974).
- 14 U.S.—*Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 119 S. Ct. 2295, 144 L. Ed. 2d 715, 43 Fed. R. Serv. 3d 691 (1999).

As to the availability of a class action when adjudications with respect to individual members of the class would substantially impair or impede others' ability to protect their interests, see [C.J.S., Federal Civil Procedure § 108](#).

As to the propriety of certifying a class action where there is a limited settlement fund, see [C.J.S., Compromise and Settlement § 27](#).

- 15 Ark.—*Worth v. City of Rogers*, 351 Ark. 183, 89 S.W.3d 875 (2002).
- Del.—*In re Celera Corp. Shareholder Litigation*, 59 A.3d 418 (Del. 2012).
- N.D.—*Ritter, Laber and Associates, Inc. v. Koch Oil, Inc., a Div. of Koch Industries, Inc.*, 2000 ND 15, 605 N.W.2d 153 (N.D. 2000).
- S.C.—*Hospitality Management Associates, Inc. v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611 (2004).
- 16 N.Y.—*Colt Industries Shareholder Litigation v. Colt Industries Inc.*, 77 N.Y.2d 185, 565 N.Y.S.2d 755, 566 N.E.2d 1160 (1991).
- 17 Tex.—*Compaq Computer Corp. v. Lapray*, 135 S.W.3d 657, 53 U.C.C. Rep. Serv. 2d 483 (Tex. 2004).
- 18 Tex.—*Stonebridge Life Ins. Co. v. Pitts*, 236 S.W.3d 201 (Tex. 2007).
- 19 Conn.—*Barrett v. Southern Connecticut Gas Co.*, 172 Conn. 362, 374 A.2d 1051 (1977).

16D C.J.S. Constitutional Law § 1945

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

4. Process or Notice

a. Necessity and Adequacy of Notice

§ 1945. Necessity and adequacy of notice prior to judgment, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3881, 3953, 3972 to 3979

Generally, due process requires adequate notice in any civil proceeding before a valid final judgment may be entered or before an individual may be deprived of a property interest.

Generally, due process requires adequate¹ notice of the pendency of an action that adjudicates a person's rights,² including in any civil proceeding before a valid final judgment may be entered³ or before an individual may be deprived of a property interest.⁴ For example, the Due Process Clause requires that the personal representative of an estate provide actual notice of probate proceedings to heirs⁵ and known or reasonably ascertainable creditors.⁶

Notice may be postponed in a truly unusual situation.⁷ A judicial decision without notice is contrary to fundamental principles of justice and due process, except under exigent or special circumstances, with reasonably prompt subsequent notice and an opportunity to be heard.⁸ Where there is a proper provision for hearing by review, it is not a denial of due process to permit the entry of a judgment without notice.⁹

Due process requires only that interested parties be given notice.¹⁰ Thus, notice need not be given to persons whose property rights are not affected by the proceeding¹¹ or of orders that do not affect substantive rights.¹²

Under due process, all parties to litigation are entitled to receive notice of important hearings and other critical stages in the proceeding.¹³ However, due process does not require that notice be given before the confirmation of rights previously established in a proceeding of which adequate notice was given.¹⁴

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Footnotes

- 1 U.S.—*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 580, 62 L. Ed. 2d 490 (1980).
- 2 Utah—*Pease v. Industrial Com'n of Utah*, 694 P.2d 613 (Utah 1984).
Adoption
An unwed father, who had established paternity and took sufficient steps to establish a relationship with his child, had a due process right to notice of the grandparents' petition to adopt the child.
Okla.—*Wade v. Geren*, 1987 OK 81, 743 P.2d 1070 (Okla. 1987).
- 3 U.S.—*Texaco, Inc. v. Short*, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982); *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975).
Ga.—*Pennington v. Pennington*, 291 Ga. 165, 728 S.E.2d 230 (2012).
Before issuance of permanent injunction
Kan.—*Kansas East Conference of United Methodist Church, Inc. v. Bethany Medical Center, Inc.*, 266 Kan. 366, 969 P.2d 859 (1998).
Excess insurer
An excess insurer's right to due process was violated when it was summarily ordered, with no notice, and at hearing at which its counsel was not present, to pay on a claim that was essentially against the primary liability for which a city was self-insured.
Ariz.—*Cravens, Dargan and Co. v. Superior Court In and For Pima County*, 153 Ariz. 474, 737 P.2d 1373 (1987).
- 4 U.S.—*Sullivan v. Choquette*, 420 F.2d 674 (1st Cir. 1969); *Collins v. Wolfson*, 498 F.2d 1100 (5th Cir. 1974).
Idaho—*Ferguson v. Board of Trustees of Bonner County School Dist. No. 82*, 98 Idaho 359, 564 P.2d 971 (1977).
Ohio—*Galt Alloys, Inc. v. KeyBank Natl. Assn.*, 85 Ohio St. 3d 353, 1999-Ohio-383, 708 N.E.2d 701 (1999).
Okla.—*Vance v. Federal Nat. Mortg. Ass'n*, 1999 OK 73, 988 P.2d 1275 (Okla. 1999).
Mo.—*In re Estate of Austin*, 389 S.W.3d 168 (Mo. 2013).
Wash.—*Olympic Forest Products, Inc. v. Chaussee Corp.*, 82 Wash. 2d 418, 511 P.2d 1002 (1973).
Temporary deprivation
Cal.—*Isbell v. County of Sonoma*, 21 Cal. 3d 61, 145 Cal. Rptr. 368, 577 P.2d 188 (1978).
Equitable title
Del.—*Gelof v. First Nat. Bank of Frankford*, 373 A.2d 206 (Del. 1977).
Guardian's sale
A guardian who seeks authority to sell a joint-tenancy asset of the ward is required, by minimum standards of due process, to give notice to the other joint tenant whose interest would be affected.
Okla.—*Prickett v. Moore*, 1984 OK 54, 684 P.2d 1191 (Okla. 1984).
Will contest
A statute requiring that notice to probate a will in solemn form be given only to heirs at law violated due process to the extent it failed to require that notice be given to propounders and beneficiaries of another purported will of the decedent that had previously been filed for probate in the same county.
Ga.—*McKnight v. Boggs*, 253 Ga. 537, 322 S.E.2d 283 (1984).

- 5 Iowa—*Matter of Estate of Weidman*, 476 N.W.2d 357 (Iowa 1991).
- 6 D.C.—*In re Estate of Bryant*, 793 A.2d 487 (D.C. 2002).
- Kan.—*Matter of Estate of McDowell*, 245 Kan. 278, 777 P.2d 826 (1989).
- Miss.—*Matter of Estate of Petrick*, 635 So. 2d 1389 (Miss. 1994).
- Mo.—*In re Estate of Austin*, 389 S.W.3d 168 (Mo. 2013).
- Wyo.—*In re Estate of Novakovich*, 2004 WY 158, 101 P.3d 931 (Wyo. 2004).
- 7 U.S.—*Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972).
- Cal.—*Kash Enterprises, Inc. v. City of Los Angeles*, 19 Cal. 3d 294, 138 Cal. Rptr. 53, 562 P.2d 1302 (1977).
- Mass.—*Haverhill Manor, Inc. v. Commissioner of Public Welfare*, 368 Mass. 15, 330 N.E.2d 180 (1975).
- N.Y.—*Blye v. Globe-Wernicke Realty Co.*, 33 N.Y.2d 15, 347 N.Y.S.2d 170, 300 N.E.2d 710 (1973).
- Wash.—*City of Everett v. Slade*, 83 Wash. 2d 80, 515 P.2d 1295 (1973).
- Temporary conservator**
- Appointment of a temporary conservator, without notice, to protect the ward's property pending a hearing on the petition for the appointment of a permanent conservator does not offend due process.
- Cal.—*Conservatorship of Gray*, 12 Cal. App. 3d 513, 90 Cal. Rptr. 776 (2d Dist. 1970).
- 8 N.D.—*McWethy v. McWethy*, 366 N.W.2d 796 (N.D. 1985).
- 9 U.S.—*Consolidated Edison Co. of New York v. N.L.R.B.*, 305 U.S. 197, 59 S. Ct. 206, 83 L. Ed. 126 (1938).
- Opportunity of surety to appeal**
- U.S.—*American Surety Co. v. Baldwin*, 287 U.S. 156, 53 S. Ct. 98, 77 L. Ed. 231, 86 A.L.R. 298 (1932).
- 10 U.S.—*Redhail v. Zablocki*, 418 F. Supp. 1061, 23 Fed. R. Serv. 2d 803 (E.D. Wis. 1976), judgment aff'd, 434 U.S. 374, 98 S. Ct. 673, 54 L. Ed. 2d 618, 24 Fed. R. Serv. 2d 1313 (1978).
- 11 Mich.—*Currier Lumber Co. v. Van Every*, 312 Mich. 375, 20 N.W.2d 241 (1945).
- N.Y.—*People ex rel. Scarpetta v. Spence-Chapin Adoption Service*, 28 N.Y.2d 185, 321 N.Y.S.2d 65, 269 N.E.2d 787 (1971).
- Tenn.—*Walker v. Graves*, 174 Tenn. 336, 125 S.W.2d 154 (1939).
- Vt.—*Town of Brighton v. Town of Charleston*, 114 Vt. 316, 44 A.2d 628 (1945).
- Conservatorship proceeding**
- The absence of any requirement, in a statute governing voluntary conservatorship proceedings, for notice to family members does not violate the due process rights of family members who had no property interest in the proceeding.
- Mo.—*Matter of Estate of Potashnick*, 841 S.W.2d 714 (Mo. Ct. App. E.D. 1992).
- 12 Colo.—*Matter of Decker's Estate*, 194 Colo. 143, 570 P.2d 832 (1977).
- Wis.—*Briggson v. City of Viroqua*, 264 Wis. 40, 58 N.W.2d 543 (1953).
- 13 Okla.—*Shamblin v. Beasley*, 1998 OK 88, 967 P.2d 1200 (Okla. 1998), as corrected, (Jan. 28, 1999).
- Tenn.—*Bryant v. Edwards*, 707 S.W.2d 868 (Tenn. 1986).
- Attorney's obligation**
- Attorneys may have the burden, consistent with notions of fundamental fairness at the heart of due process, of notifying, by mail, any unrepresented opposing party when the case appears on the trial calendar.
- Ga.—*Green v. Green*, 263 Ga. 551, 437 S.E.2d 457 (1993).
- Trial date**
- Ga.—*Crenshaw v. Crenshaw*, 267 Ga. 20, 471 S.E.2d 845 (1996).
- Final appealable order**
- Ohio—*State ex rel. Sautter v. Grey*, 117 Ohio St. 3d 465, 2008-Ohio-1444, 884 N.E.2d 1062 (2008).
- Notice of appeal**
- Vt.—*Appeal of Maurice*, 117 Vt. 264, 90 A.2d 440 (1952).
- 14 U.S.—*Griffin v. Griffin*, 327 U.S. 220, 66 S. Ct. 556, 90 L. Ed. 635 (1946).

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

4. Process or Notice

a. Necessity and Adequacy of Notice

§ 1946. Standard of adequacy

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Notice must be reasonably calculated to reach the interested parties and afford them an opportunity to respond.

To be adequate in the due process sense, notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections; be of such a nature as to convey reasonably the required information; and afford a reasonable time for those interested to make their appearance.¹ The notice requirements of the Due Process Clause require more than mere compliance with procedural formalities and guarantee that the notice procedure is fair.² The content of the notice must apprise the defendant of the nature of the claim and of the relief sought.³ For due process purposes, the notice must inform one of the antagonist's demands and of the consequences of a default,⁴ and the relief granted must be responsive to the cause of action of which notice has been given.⁵

The notice required by due process must be granted at a meaningful time⁶ so as to afford a reasonable opportunity to defend the action.⁷ Notice, for purposes of due process, must not be a mere gesture but rather an effort reasonably calculated to effect actual notice.⁸

However, actual notice is not required but only notice that is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action.⁹ A scheduling order meets the requirements of due process if it is sufficient to provide the parties with notice of the issues that would be addressed at the hearing.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

For purposes of procedural due process, notice must reasonably convey the required information to the affected party, must afford a reasonable time for that party to respond, and is constitutionally adequate when the practicalities and peculiarities of the case are reasonably met. [U.S. Const. Amend. 14. Melton v. Indiana Athletic Trainers Board, 156 N.E.3d 633 \(Ind. Ct. App. 2020\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[United Student Aid Funds, Inc. v. Espinosa](#), 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158, 76 Fed. R. Serv. 3d 364 (2010); [Mullane v. Central Hanover Bank & Trust Co.](#), 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).
Fla.—[Miami-Dade County v. Wilson](#), 44 So. 3d 1266 (Fla. 3d DCA 2010); [Gamez v. First Union Nat. Bank of Florida](#), 31 So. 3d 220 (Fla. 4th DCA 2010).
Forfeiture
The *Mullane* test of reasonableness under the circumstances supplies the appropriate analytical framework for determining whether the means used by the Federal Bureau of Investigation to provide notice to a federal prisoner of his right to contest an administrative forfeiture of cash seized during a search of the residence where he was arrested were sufficient to satisfy due process requirements, and new notice procedures adopted by the government do not necessarily demonstrate the infirmity, for purposes of due process, of those that were replaced.
U.S.—[Dusenbery v. U.S.](#), 534 U.S. 161, 122 S. Ct. 694, 151 L. Ed. 2d 597 (2002).
Bankruptcy proceedings
Bankruptcy creditor received adequate notice of possible discharge of student loan debt.
U.S.—[United Student Aid Funds, Inc. v. Espinosa](#), 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158, 76 Fed. R. Serv. 3d 364 (2010).
- 2 Okla.—[Vance v. Federal Nat. Mortg. Ass'n](#), 1999 OK 73, 988 P.2d 1275 (Okla. 1999).
- 3 U.S.—[Mullane v. Central Hanover Bank & Trust Co.](#), 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950); [Perez v. Lorraine Enterprises, Inc.](#), 769 F.3d 23 (1st Cir. 2014); [Oneida Indian Nation of New York v. Madison County](#), 665 F.3d 408 (2d Cir. 2011), cert. dismissed, 134 S. Ct. 1582, 188 L. Ed. 2d 589 (2014).
Specific relief sought
Cal.—[In re Marriage of Lippel](#), 51 Cal. 3d 1160, 276 Cal. Rptr. 290, 801 P.2d 1041, 5 A.L.R.5th 1156 (1990).
- 4 Cal.—[Greenup v. Rodman](#), 42 Cal. 3d 822, 231 Cal. Rptr. 220, 726 P.2d 1295 (1986).
Okla.—[Shamblin v. Beasley](#), 1998 OK 88, 967 P.2d 1200 (Okla. 1998), as corrected, (Jan. 28, 1999).
- 5 Ala.—[Evans v. Evans](#), 200 Ala. 329, 76 So. 95 (1917).

- 6 U.S.—*Sarzen v. Gaughan*, 489 F.2d 1076 (1st Cir. 1973).
Okla.—*Crandell v. State*, 1975 OK CR 127, 539 P.2d 398 (Okla. Crim. App. 1975).
Pa.—*Harrington v. Philadelphia City Employees Federal Credit Union*, 243 Pa. Super. 33, 364 A.2d 435 (1976).
- 7 U.S.—*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950);
Roller v. Holly, 176 U.S. 398, 20 S. Ct. 410, 44 L. Ed. 520 (1900).
N.H.—*In re School Administrative Unit #£44*, 162 N.H. 79, 27 A.3d 819, 271 Ed. Law Rep. 1013 (2011),
as modified on denial of reconsideration, (June 22, 2011).
Notice of hearing
While rules of civil procedure permit the reduction of the time for notice of a hearing, a reduction to the extent
that a party entitled to notice is deprived of all opportunity to prepare for the hearing denies due process.
W. Va.—*State ex rel. Ward v. Hill*, 200 W. Va. 270, 489 S.E.2d 24 (1997).
- 8 U.S.—*Snider Intern. Corp. v. Town of Forest Heights, Md.*, 739 F.3d 140 (4th Cir. 2014), cert. denied, 134
S. Ct. 2667, 189 L. Ed. 2d 210 (2014).
- 9 U.S.—*Slaven v. Engstrom*, 710 F.3d 772 (8th Cir. 2013).
- 10 Mont.—*In re Marriage of Pospisil*, 2000 MT 132, 299 Mont. 527, 1 P.3d 364 (2000).
Intervenors
A court's notice informing intervenors of its intent to rule on a claim affecting them did not violate due
process since the intervenors were parties to the case.
N.H.—*Town of Nottingham v. Bonser*, 146 N.H. 418, 777 A.2d 851 (2001).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

4. Process or Notice

a. Necessity and Adequacy of Notice

§ 1947. Notice to representative

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Notice to a representative, such as an attorney or partner, may be sufficient to meet due process requirements.

Notice to an attorney regarding the status of a lawsuit is ordinarily considered sufficient notice to the client to satisfy due process,¹ after a party has personally appeared,² although, if the attorney no longer represents the client, it must be reasonably calculated to inform and reach the former client.³ Thus, a litigant should be given fair notice after his or her attorney was granted leave to withdraw, and a failure to provide that notice is a due process violation.⁴ If a court intends to dismiss a minor's action for failure to prosecute, notice to the attorney alone is insufficient without notice to the guardian ad litem appointed to represent the minor.⁵

Notice to general partners is sufficient to afford the notice to the limited partnership that is necessary to satisfy due process.⁶ Notice to an estate representative satisfies the requirements of due process as far as notice to persons who have a legally protected interest in the property is concerned.⁷

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Footnotes

- 1 Del.—[Sevison v. Sevison](#), 396 A.2d 178 (Del. Super. Ct. 1978).
Ill.—[People v. Brown](#), 39 Ill. 2d 307, 235 N.E.2d 562 (1968).
Md.—[Tvardek v. Tvardek](#), 257 Md. 88, 261 A.2d 762 (1970).
- 2 Ga.—[Allen v. Board of Tax Assessors of Paulding County](#), 247 Ga. 568, 277 S.E.2d 660 (1981).
La.—[Parker v. Parker](#), 382 So. 2d 201 (La. Ct. App. 2d Cir. 1980).
Wash.—[Sweeny v. Sweeny](#), 43 Wash. 2d 542, 262 P.2d 207 (1953).
- 3 Okla.—[Daniels v. Daniels](#), 1981 OK 79, 634 P.2d 709 (Okla. 1981).
Notice to corporate officers sufficient
Alaska—[Murat v. F/V Shelikof Strait](#), 793 P.2d 69 (Alaska 1990).
Notice insufficient for removal of personal representative
Personal representative of estate did not receive adequate notice prior to his removal and contempt citation where removal request was made orally at show cause hearing and was never served on the representative.
Fla.—[Blechman v. Dely](#), 138 So. 3d 1110 (Fla. 4th DCA 2014).
- 4 Conn.—[Hasbrouck v. Hasbrouck](#), 195 Conn. 558, 489 A.2d 1022 (1985).
- 5 Wis.—[Brandt v. Brandt](#), 161 Wis. 2d 784, 468 N.W.2d 769 (Ct. App. 1991).
- 6 Colo.—[Frazier v. Carlin](#), 42 Colo. App. 226, 591 P.2d 1348 (App. 1979).
- 7 Ga.—[Allan v. Allan](#), 236 Ga. 199, 223 S.E.2d 445 (1976).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

4. Process or Notice

a. Necessity and Adequacy of Notice

§ 1948. Notice by publication, posting, or mail

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West's Key Number Digest

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Whenever actual notice is impracticable and a court has jurisdiction, due process is satisfied by notice by publication, posting, or mail, but more effective means must be attempted before publication.

Whenever actual notice is impracticable and the court has jurisdiction, the requirement of due process may be satisfied by notice given by publication,¹ posting,² or mail³ or by publication or posting and mail.⁴ On the other hand, constructive notice alone does not satisfy due process where it is practicable to give some form of personal notice.⁵ For instance, due process requires that notice be given by mail or some other method equally certain to insure actual notice, rather than publication,⁶ to persons who are known or reasonably ascertainable,⁷ since notice by publication is not sufficient with respect to a person whose name and address are known or easily ascertainable and whose legally protected interests are directly affected by the proceedings in question.⁸ To satisfy due process, a posting must follow efforts to serve the defendant by other means and must provide actual notice to the person to whom it is directed in most instances.⁹

CUMULATIVE SUPPLEMENT

Cases:

Where the names and post addresses of those affected by a change in a substantive property or liberty interest are at hand, the reasons disappear for resort to means less likely than the mails to apprise affected persons of the changes, pursuant to Due Process Clause. [U.S.C.A. Const.Amend. 14](#). [Nozzi v. Housing Authority of City of Los Angeles](#), 806 F.3d 1178 (9th Cir. 2015).

Service on foreign defendant by publishing notice of lawsuit in two Venezuelan newspapers and posting copy of service documents, including complaint, on defendant's door in compliance with Venezuelan law was reasonably calculated to apprise defendant of pendency of the action seeking money judgment and satisfied due process; service was likely to come to defendant's attention, and he had actual knowledge of case. [U.S.C.A. Const.Amend. 14](#); Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, Arts. 1, 6, 28 U.S.T. 361. [Puigbo v. Medex Trading, LLC](#), 209 So. 3d 598 (Fla. 3d DCA 2014).

[END OF SUPPLEMENT]

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Footnotes

- 1

U.S.—[Standard Oil Co. v. State of N.J.](#), by Parsons, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951); [Mullane v. Central Hanover Bank & Trust Co.](#), 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).

As to service of process by publication, see § 1951.

Notice to probate creditors

Due process does not require any more than publication notice to a creditor that a decedent's estate is being administered for purposes of the operation of a nonclaim statute barring claims against the estate that are not filed within six months after the first published notice of letters of administration.

Mo.—[Estate of Busch v. Ferrell-Duncan Clinic, Inc.](#), 700 S.W.2d 86, 56 A.L.R.4th 451 (Mo. 1985).

Adoption

An unwed father's due process rights were not violated by publishing a "John Doe" notice of an adoption action where the father's consent was not needed due to his failure to accept the responsibilities of fatherhood, and his identity was unknown because the mother refused to reveal it.

S.C.—[Evans v. South Carolina Dept. of Social Services](#), 303 S.C. 108, 399 S.E.2d 156 (1990).

Bankruptcy notice to creditors

A debtor corporation's publication of a notice to unknown creditors of bankruptcy proceeding in a newspaper of national circulation available in the forum satisfied due process as it informed creditors of the existence of the bankruptcy case, their opportunity to file proofs of claim, relevant deadlines, consequences of not filing a proof of claim, and how proofs of claim should be filed.

U.S.—[In re Placid Oil Co.](#), 753 F.3d 151 (5th Cir. 2014).

A.L.R. Library

[Validity of nonclaim statute or rule provision for notice by publication to claimants against estate—post-1950 cases](#), 56 A.L.R.4th 458.
- 2

Ark.—[Prather v. Martin](#), 257 Ark. 576, 519 S.W.2d 72 (1975).

Ill.—[Hoehamer v. Village of Elmwood Park](#), 361 Ill. 422, 198 N.E. 345, 102 A.L.R. 196 (1935).

Wash.—[In re Haukeli's Estate](#), 25 Wash. 2d 328, 171 P.2d 199 (1946).
- 3

U.S.—[International Shoe Co. v. State of Wash.](#), Office of Unemployment Compensation and Placement, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95, 161 A.L.R. 1057 (1945).

Unclaimed certified letter

A former husband living in another state had no due process right to actual delivery of a petition for modification of child support, and an unclaimed certified letter, return receipt requested, was sufficient, in view of the divorce court's continuing jurisdiction.

Wash.—[In re Marriage of McLean](#), 132 Wash. 2d 301, 937 P.2d 602 (1997).

- 4 Pa.—[Kelsey-Barber Corp. v. Campbell](#), 296 Pa. Super. 319, 442 A.2d 788 (1982).
Wyo.—[Rodin v. State ex rel. City of Cheyenne](#), 417 P.2d 180 (Wyo. 1966).
- 5 N.M.—[Clark v. LeBlanc](#), 1979-NMSC-034, 92 N.M. 672, 593 P.2d 1075 (1979).
Tex.—[City of Houston v. Parkinson](#), 419 S.W.2d 900 (Tex. Civ. App. Houston 1967), writ refused n.r.e., (Feb. 14, 1968).
- 6 Ohio—[Central Trust Co., N.A. v. Spencer](#), 41 Ohio App. 3d 237, 535 N.E.2d 347 (1st Dist. Hamilton County 1987).
R.I.—[In re Estate of Santoro](#), 572 A.2d 298 (R.I. 1990).
- 7 Iowa—[Matter of Estate of Herron](#), 561 N.W.2d 30 (Iowa 1997).
R.I.—[In re Estate of Santoro](#), 572 A.2d 298 (R.I. 1990).
- 8 Kan.—[Dodson v. City of Ulysses](#), 219 Kan. 418, 549 P.2d 430 (1976).
N.M.—[Estate of Engbrock](#), 1977-NMSC-046, 90 N.M. 492, 565 P.2d 662 (1977).
Ohio—[In re Foreclosure of Liens for Delinquent Taxes](#), 62 Ohio St. 2d 333, 16 Ohio Op. 3d 393, 405 N.E.2d 1030 (1980).
Okla.—[Johnson v. McDaniel](#), 1977 OK 167, 569 P.2d 977 (Okla. 1977).
Ill.—[Passalino v. City of Zion](#), 237 Ill. 2d 118, 340 Ill. Dec. 567, 928 N.E.2d 814 (2010).
Utah—[Matter of Estate of Anderson](#), 821 P.2d 1169 (Utah 1991).
- Probate claimant**
Where an estate had actual knowledge of a claim against the decedent, the failure to take any step to notify the claimant of the probate proceedings, other than publishing a notice pursuant to statute, was insufficient to afford the claimant due process.
- Nev.—[Continental Ins. Co. v. Moseley](#), 100 Nev. 337, 683 P.2d 20 (1984).
- 9 **Posting in eviction suit insufficient**
U.S.—[Greene v. Lindsey](#), 456 U.S. 444, 102 S. Ct. 1874, 72 L. Ed. 2d 249 (1982).

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16D C.J.S. Constitutional Law § 1949

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

4. Process or Notice

a. Necessity and Adequacy of Notice

§ 1949. Class actions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3981 to 3983

As a matter of due process, absent members in a class action predominantly for monetary relief are entitled to notice of a proposed settlement and of the right to opt out although notice is not required in class actions for injunctive or declaratory relief.

Adequate and timely notice, as a matter of due process, is required in representative actions if the resulting judgment is to be binding on absent class members.¹ While, when monetary damages are sought on behalf of a class, due process requires notice to class members, because a property right is at stake,² notice to absent class members is not required, as a matter of due process, in a class action brought when the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making injunctive or declaratory relief with respect to the class as a whole appropriate.³ Notice to class members may be constitutionally required even in the absence of an express requirement in the statute or rule of civil procedure governing class actions.⁴

To conform to due process, notice must fairly insure the protection of the interests of the absent parties⁵ and must be sufficiently informative and give a sufficient opportunity for a response.⁶ The best notice practicable under the circumstances must be given, reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and to afford them the opportunity to present their objections,⁷ including individual notice to those class members who can be identified through reasonable effort.⁸ While due process dictates that adequate notice of the class action be given, the manner and form of the notice is within the trial court's discretion.⁹

Notice of settlement.

Due process requires that class members be given reasonable¹⁰ notice of a proposed settlement of a class action¹¹ or the best practicable notice under the circumstances.¹² To meet due process requirements, the notice of a proposed settlement must be sufficiently detailed to permit class members to determine the potential costs and benefits involved¹³ although class members are not expected to rely on the notice as a complete source of settlement information¹⁴ and may have sufficient notice to allow them to investigate further.¹⁵

Notice of right to opt out.

Due process requires that notice be provided to an absent plaintiff in a class action seeking to bind known plaintiffs concerning claims wholly or predominantly for money judgments with a notice of the right to opt out.¹⁶ Due process also requires providing class members who are not residents of the forum state with notice and an opportunity to opt out.¹⁷ A procedure requiring that a fully descriptive notice be sent by first-class mail to each class member, with an explanation of the right to opt out, satisfies due process.¹⁸ An opt-out notice must clearly state any liability absent class members may face, such as for attorney's fees if those requested by class counsel exceed the amount recovered from the defendant.¹⁹

CUMULATIVE SUPPLEMENT

Cases:

Class member did not have due process right to second, settlement-stage opt-out opportunity, in class action by purchasers of real-estate investment seminar against seminar founder, alleging racketeering and violations of various state unfair competition laws; due process only required that class members be given single opportunity to opt out of class, which member was given. [U.S. Const. Amend. 5](#); [Fed. R. Civ. P. 23](#). [Low v. Trump University, LLC](#), 881 F.3d 1111 (9th Cir. 2018).

Notice of opt-out class action settlement by first-class mail to landowner class members satisfied due process, in action alleging trespass and other claims against telecommunications companies, although settlement required members who did not opt out to convey permanent easements to companies for installation of fiber-optic cable underneath existing railroad rights-of-way in exchange for right to submit claim for \$0.75 or \$1.25 per linear foot of affected property; structure of settlement was precisely what one would expect as resolution of class claims, as members would not have any greater rights without easement, and envelope indicated importance of its contents by stating "COURT-ORDERED LEGAL NOTICE" and "IMPORTANT NOTICE ABOUT YOUR PROPERTY." [U.S. Const. Amend. 14](#); [Fed. R. Civ. P. 23\(c\)\(2\)](#). [Fager v. CenturyLink Communications, LLC](#), 854 F.3d 1167 (10th Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

- 1 U.S.—*In re Four Seasons Securities Laws Litigation*, 502 F.2d 834, 19 Fed. R. Serv. 2d 12 (10th Cir. 1974).
 Colo.—*Jahn ex rel. Jahn v. ORCR, Inc.*, 92 P.3d 984 (Colo. 2004).
 Del.—*MCA, Inc. v. Matsushita Elec. Indus. Co., Ltd.*, 785 A.2d 625 (Del. 2001).
 Ill.—*Client Follow-Up Co. v. Hynes*, 105 Ill. App. 3d 619, 61 Ill. Dec. 332, 434 N.E.2d 485 (1st Dist. 1982).
 N.M.—*Eastham v. Public Employees Retirement Ass'n Bd.*, 1976-NMSC-046, 89 N.M. 399, 553 P.2d 679 (1976).
 S.C.—*Hospitality Management Associates, Inc. v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611 (2004).
Effect of failure
 As a matter of due process, any member of a putative class who did not receive notice would not be bound by the judgment.
 Neb.—*Hoiengs v. County of Adams*, 245 Neb. 877, 516 N.W.2d 223 (1994).
Media coverage insufficient
- 2 Ala.—*Taylor v. Liberty Nat. Life Ins. Co.*, 462 So. 2d 907 (Ala. 1984).
 Colo.—*Jahn ex rel. Jahn v. ORCR, Inc.*, 92 P.3d 984 (Colo. 2004).
Even if equitable relief also sought
- 3 Del.—*Nottingham Partners v. Dana*, 564 A.2d 1089 (Del. 1989).
 U.S.—*Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239, 19 Fed. R. Serv. 2d 1073 (3d Cir. 1975); *Alexander v. Aero Lodge No. 735, Intern. Ass'n of Machinists and Aerospace Workers, AFL-CIO*, 565 F.2d 1364, 24 Fed. R. Serv. 2d 468 (6th Cir. 1977).
- 4 Neb.—*Hoiengs v. County of Adams*, 245 Neb. 877, 516 N.W.2d 223 (1994).
 N.C.—*Frost v. Mazda Motor of America, Inc.*, 353 N.C. 188, 540 S.E.2d 324 (2000).
- 5 U.S.—*Lamb v. United Sec. Life Co.*, 59 F.R.D. 25, 16 Fed. R. Serv. 2d 38 (S.D. Iowa 1972).
 Neb.—*Gant v. City of Lincoln*, 193 Neb. 108, 225 N.W.2d 549 (1975).
 N.D.—*Horst v. Guy*, 211 N.W.2d 723 (N.D. 1973).
- 6 U.S.—*Kyriazi v. Western Elec. Co.*, 647 F.2d 388, 31 Fed. R. Serv. 2d 615 (3d Cir. 1981).
- 7 U.S.—*Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 105 S. Ct. 2965, 86 L. Ed. 2d 628, 2 Fed. R. Serv. 3d 797 (1985).
- 8 U.S.—*Greenfield v. Villager Industries, Inc.*, 483 F.2d 824, 17 Fed. R. Serv. 2d 577, 32 A.L.R. Fed. 83 (3d Cir. 1973).
 Colo.—*Mountain States Tel. and Tel. Co. v. District Court, City and County of Denver*, 778 P.2d 667 (Colo. 1989).
 Fla.—*National Lake Developments, Inc. v. Lake Tippecanoe Owners Ass'n, Inc.*, 417 So. 2d 655 (Fla. 1982).
 Ill.—*Client Follow-Up Co. v. Hynes*, 105 Ill. App. 3d 619, 61 Ill. Dec. 332, 434 N.E.2d 485 (1st Dist. 1982).
 N.C.—*English v. Holden Beach Realty Corp.*, 41 N.C. App. 1, 254 S.E.2d 223 (1979).
- 9 N.C.—*Crow v. Citicorp Acceptance Co., Inc.*, 319 N.C. 274, 354 S.E.2d 459 (1987).
- 10 U.S.—*Hecht v. United Collection Bureau, Inc.*, 691 F.3d 218, 83 Fed. R. Serv. 3d 510 (2d Cir. 2012); *Fowler v. Birmingham News Co.*, 608 F.2d 1055, 52 A.L.R. Fed. 449 (5th Cir. 1979); *Reynolds v. National Football League*, 584 F.2d 280, 26 Fed. R. Serv. 2d 67 (8th Cir. 1978).
- 11 U.S.—*Simer v. Rios*, 661 F.2d 655, 32 Fed. R. Serv. 2d 781, 68 A.L.R. Fed. 235 (7th Cir. 1981); *Grunin v. International House of Pancakes*, 513 F.2d 114, 19 Fed. R. Serv. 2d 1245 (8th Cir. 1975); *In re Four Seasons Securities Laws Litigation*, 502 F.2d 834, 19 Fed. R. Serv. 2d 12 (10th Cir. 1974).
 Ark.—*Ballard v. Martin*, 349 Ark. 564, 79 S.W.3d 838 (2002).
- 12 U.S.—*Hill v. Art Rice Realty Co.*, 66 F.R.D. 449 (N.D. Ala. 1974), *aff'd*, 511 F.2d 1400 (5th Cir. 1975).
Mailed and published
 U.S.—*Oppenlander v. Standard Oil Co. (Indiana)*, 64 F.R.D. 597 (D. Colo. 1974).
Time and mailing sufficient
 A notice of a hearing on the fairness of a proposed class action settlement did not violate due process on the ground it was mailed only two weeks before the hearing, where class members had approximately three months notice of the opt-out deadline, and some hired an attorney to represent them in objecting to the

settlement, or because it was mailed by standard mail with the return of undelivered notices requested, instead of by first-class mail, which would have been forwarded.

Ark.—*Ballard v. Martin*, 349 Ark. 564, 79 S.W.3d 838 (2002).

13 U.S.—*In re Baby Products Antitrust Litigation*, 708 F.3d 163, 84 Fed. R. Serv. 3d 1324 (3d Cir. 2013); *Gooch v. Life Investors Ins. Co. of America*, 672 F.3d 402, 81 Fed. R. Serv. 3d 832 (6th Cir. 2012); *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation*, 226 F.R.D. 498 (E.D. Pa. 2005).

Iowa—*Barkema v. Williams Pipeline Co.*, 666 N.W.2d 612 (Iowa 2003).

14 U.S.—*Rubenstein v. Republic Nat. Life Ins. Co.*, 74 F.R.D. 337 (N.D. Tex. 1976).

15 Iowa—*Barkema v. Williams Pipeline Co.*, 666 N.W.2d 612 (Iowa 2003).

16 U.S.—*Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 105 S. Ct. 2965, 86 L. Ed. 2d 628, 2 Fed. R. Serv. 3d 797 (1985).

As to when the right to opt out is required by due process, see § 1944.

17 Kan.—*Sternberger v. Marathon Oil Co.*, 257 Kan. 315, 894 P.2d 788 (1995).

18 U.S.—*Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 105 S. Ct. 2965, 86 L. Ed. 2d 628, 2 Fed. R. Serv. 3d 797 (1985).

19 Vt.—*State v. Homeside Lending, Inc.*, 175 Vt. 239, 2003 VT 17, 826 A.2d 997 (2003).

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16D C.J.S. Constitutional Law § 1950

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

4. Process or Notice

b. Service of Process

§ 1950. Requirement that process be served, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3881, 3953, 3972 to 3979

While service of process is required by due process, no particular form of process is necessary to constitute due process.

While due process requires that a party be informed of an action pending against him or her, with the power to require that the person comply with the court's orders,¹ the actual service of process also implicates the due process requirements of notice and opportunity to be heard.² While due process requires that a party be informed of an action pending against him or her,³ and it has been said that a summons is necessary,⁴ no particular form of process is necessary to constitute due process.⁵

If the essentials of notice and hearing are preserved, the particular form of procedure rests with the legislature.⁶ A legislature may also prescribe any method of service so long as the requirements of due process are observed.⁷ However, due process does require that service always be made except when properly waived,⁸ and that it be in compliance with the governing statutes,⁹ and court rules,¹⁰ although not every irregularity is sufficient to invalidate process if the departure does not offend articulated

standards of due process.¹¹ In addition, due process requires that before one is bound by a judgment affecting a property right, some process be served calculated to give the person notice of the proceedings.¹²

Due process may be shown by service on the agent or other representative of an association,¹³ or corporation.¹⁴ As opposed to a mere defect in service, a complete failure or lack of service on a party with a property interest adversely affected by the judgment constitutes a due process violation that warrants setting the judgment aside.¹⁵

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Footnotes

- 1 Idaho—*McGlooin v. Gwynn*, 140 Idaho 727, 100 P.3d 621 (2004).
- 2 N.Y.—*Keane v. Kamin*, 94 N.Y.2d 263, 701 N.Y.S.2d 698, 723 N.E.2d 553 (1999).
S.D.—*R.B.O. v. Priests of Sacred Heart*, 2011 SD 86, 807 N.W.2d 808, 275 Ed. Law Rep. 983 (S.D. 2011).
- 3 Ga.—*Southworth v. Southworth*, 265 Ga. 671, 461 S.E.2d 215 (1995).
S.D.—*Matter of R.P.*, 498 N.W.2d 364 (S.D. 1993).
- 4 Ark.—*Raymond v. Raymond*, 343 Ark. 480, 36 S.W.3d 733 (2001).
- 5 U.S.—*Gelfert v. National City Bank of New York*, 313 U.S. 221, 61 S. Ct. 898, 85 L. Ed. 1299, 133 A.L.R. 1467 (1941).
Utah—*Genuine Parts Co. v. Larson*, 555 P.2d 285 (Utah 1976).
Wis.—*State v. Erotomic*, 87 Wis. 2d 536, 275 N.W.2d 160 (Ct. App. 1979).
- 6 § 1909.
- 7 Ark.—*Yocum v. Oklahoma Tire & Supply Co.*, 191 Ark. 1126, 89 S.W.2d 919 (1936).
Kan.—*Threadgill v. Beard*, 225 Kan. 296, 590 P.2d 1021 (1979).
Mich.—*Hill v. Persons Claiming Any Interest in or Lien upon Certain Real Property*, 329 Mich. 683, 46 N.W.2d 584 (1951).
Neb.—*Miller v. Miller*, 153 Neb. 890, 46 N.W.2d 618 (1951).
N.D.—*Darling & Co. v. Burchard*, 69 N.D. 212, 284 N.W. 856 (1939).
Pa.—*Nixon v. Nixon*, 329 Pa. 256, 198 A. 154 (1938).
Rule allowing service by mail
A bankruptcy rule authorizing service of process by first-class mail does not violate due process, especially where there are other procedures, such as a motion to vacate a default judgment, that may remedy any defect.
U.S.—*Matter of Park Nursing Center, Inc.*, 766 F.2d 261 (6th Cir. 1985).
Mailed notice of appeal
Due process does not automatically require that jurisdiction be obtained by personal service when a statute is silent as to the particular method; thus, an appeal to a circuit court from a decision of a county commission may be commenced by service of a notice of appeal, which is complete upon mailing.
S.D.—*Vitek v. Bon Homme County Bd. of Com'rs*, 2002 SD 100, 650 N.W.2d 513 (S.D. 2002).
- 8 Fla.—*Valdosta Milling Co. v. Garretson*, 54 So. 2d 196 (Fla. 1951).
Ga.—*Day v. Hatton*, 210 Ga. 749, 83 S.E.2d 6 (1954).
Mo.—*State ex rel. Ferrocarriles Nacionales De Mexico v. Rutledge*, 331 Mo. 1015, 56 S.W.2d 28, 85 A.L.R. 1378 (1932).
Mont.—*Haggerty v. Sherburne Mercantile Co.*, 120 Mont. 386, 186 P.2d 884 (1947).
N.C.—*Glod v. Castle Hayne Growers & Shippers*, 239 N.C. 304, 79 S.E.2d 396 (1954).
Tex.—*Brown v. McLennan County Children's Protective Services*, 627 S.W.2d 390 (Tex. 1982).
Wis.—*Eide v. Skerbeck*, 242 Wis. 474, 8 N.W.2d 282, 145 A.L.R. 956 (1943).
Complete absence
The complete absence of service of process offends due process and may not be waived.
Miss.—*Isom v. Jernigan*, 840 So. 2d 104 (Miss. 2003).
- 9 Ala.—*Cullars v. Callan*, 36 Ala. App. 481, 59 So. 2d 608 (1950).
N.J.—*W.S. Frey Co., Inc. v. Heath*, 158 N.J. 321, 729 A.2d 1037 (1999).
S.D.—*Spade v. Branum*, 2002 SD 43, 643 N.W.2d 765 (S.D. 2002).

- 10 Ill.—[Manley Motor Sales Co. v. Kennedy](#), 95 Ill. App. 3d 199, 50 Ill. Dec. 679, 419 N.E.2d 947 (2d Dist. 1981).
Md.—[Kaplan v. Bach](#), 36 Md. App. 152, 373 A.2d 71 (1977).
Pa.—[Com. v. Good Times Sales Co.](#), 55 Pa. Commw. 160, 423 A.2d 451 (1980).
- 11 Okla.—[Vance v. Federal Nat. Mortg. Ass'n](#), 1999 OK 73, 988 P.2d 1275 (Okla. 1999).
- 12 U.S.—[Mullane v. Central Hanover Bank & Trust Co.](#), 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).
- 13 U.S.—[Wilson & Co. v. United Packinghouse Workers of America](#), 83 F. Supp. 162 (S.D. N.Y. 1949).
Ala.—[Ex parte Milner](#), 250 Ala. 511, 35 So. 2d 169 (1948).
Cal.—[Jardine v. Superior Court in and for Los Angeles County](#), 213 Cal. 301, 2 P.2d 756, 79 A.L.R. 291 (1931).
- 14 Ark.—[Natural Gas & Fuel Co. v. Lyles](#), 174 Ark. 146, 294 S.W. 395 (1927).
As to service on agents of nonresidents, see § 1953.
- 15 Tex.—[Security State Bank & Trust v. Bexar County](#), 397 S.W.3d 715 (Tex. App. San Antonio 2012).

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16D C.J.S. Constitutional Law § 1951

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

4. Process or Notice

b. Service of Process

§ 1951. Adequacy of manner of service

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3881, 3953, 3972 to 3979

To meet due process requirements, a method of service must be reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

The adequacy of service of process, so far as due process is concerned, depends on whether the particular form of service is reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.¹ The due process requirement that the means employed reflect an actual desire to inform the adverse party of the proceedings applies not only to the form of service chosen but also to efforts to ensure that service is effective.² Due process is satisfied if the manner of effecting service of a summons gives reasonable assurance that notice will actually be given,³ and does not require that method of service absolutely provide a defendant with notice, if it is reasonably calculated to do so.⁴ If it meets this standard, service of process by registered or certified mail,⁵ at a dwelling,⁶ or by publication⁷ satisfies the requirements of due process. However, a court may not presume that service by publication alone meets due process standards where the record fails to show that the

means of providing better notice were diligently pursued but proved unavailable,⁸ such as where it is not established that the plaintiff made a diligent effort to ascertain an adverse party's whereabouts.⁹

A totality of the circumstances test is applied to determine whether service actually imparts the degree of notice required by due process.¹⁰ If the service is not reasonably calculated to inform, the mere fact that the party served has actual knowledge of the suit does not satisfy due process.¹¹ When the notice is received by someone other than the addressee, due process does not depend on where it was received but on the reasonable probability that the person to whom the notice was directed will receive actual notice from the person who accepted service as the addressee's designee.¹²

CUMULATIVE SUPPLEMENT

Cases:

Judge's decision to permit Federal Trade Commission (FTC) to serve officer of company, which was suspected of involvement with revenge porn website, using alternative service of process, through several email addresses that officer had used in recent past, was reasonably calculated to apprise officer of pendency of action and afford him opportunity to present objections, and thus such service did not violate due process and setting aside, as void, of default judgment entered against officer in action brought by FTC and state was not warranted. [U.S. Const. Amend. 14](#); [Fed. R. Civ. P. 60\(b\)\(4\)](#). [Federal Trade Commission v. EMP Media, Inc.](#), 334 F.R.D. 611, 106 Fed. R. Serv. 3d 508 (D. Nev. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S.—*Milliken v. Meyer*, 311 U.S. 457, 61 S. Ct. 339, 85 L. Ed. 278, 132 A.L.R. 1357 \(1940\).](#)
[Haw.—*Eto v. Muranaka*, 99 Haw. 488, 57 P.3d 413 \(2002\), as amended, \(Nov. 12, 2002\).](#)
[D.C.—*Doe v. District of Columbia Metropolitan Police Dept.*, 948 A.2d 1210 \(D.C. 2008\).](#)
As to the adequacy of notice, generally, see [§ 1946](#).
Even if personal service not necessary
Although due process does not require personal service of process or even actual notice of a suit, service must be reasonably calculated to inform the defendant of the pendency of the proceedings so that the defendant may take advantage of the opportunity to be heard in preparing a defense.
[N.J.—*W.S. Frey Co., Inc. v. Heath*, 158 N.J. 321, 729 A.2d 1037 \(1999\).](#)
Foreign country
Service of process in a suit brought in a foreign country comports with due process under American law, so as to entitle the foreign judgment to comity, when there is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections.
[Me.—*Roy v. Buckley*, 1997 ME 155, 698 A.2d 497 \(Me. 1997\).](#)
Uniform Child Custody Jurisdiction Act
A court may adjudicate custody under the Uniform Child Custody Jurisdiction Act without acquiring personal jurisdiction over the absent parent, without violating the absent party's due process rights, if there is compliance with the notice provisions of the Act, which allow notice in a manner reasonably calculated to give actual notice, including by mail, or as directed by the court if other means of notification are ineffective.
[W. Va.—*McAtee v. McAtee*, 174 W. Va. 129, 323 S.E.2d 611 \(1984\).](#)
Water rights claims
Procedures for giving notice to water rights claimants in a pending adjudication, under which claimants received notice of the filing of a report detailing all claims and instructions on how to access the report, as

opposed to personal service of all potentially adverse claims, did not violate due process requirements where claimants were aware of the commencement of the proceeding and that claimed rights would be adjudicated, the method of notice was reasonably calculated to give claimants the information needed to pursue and protect their rights, and requiring personal service would involve a flood of paper.

Idaho—*Lu Ranching Co. v. U.S.*, 138 Idaho 606, 67 P.3d 85 (2003).

D.C.—*Appeal of H.R.*, 581 A.2d 1141 (D.C. 1990).

Ill.—*People ex rel. Devine v. \$30,700.00 U.S. Currency*, 199 Ill. 2d 142, 262 Ill. Dec. 781, 766 N.E.2d 1084 (2002).

W. Va.—*Hartwell v. Marquez*, 201 W. Va. 433, 498 S.E.2d 1 (1997).

Process refused

Since due process requires service in a manner reasonably calculated to inform the defendant of a pending lawsuit, if a process server attempts personal service and delivery is refused, the court's jurisdiction is not defeated since the defendant is on notice of the pendency of some court proceeding despite the possible lack of actual knowledge of the particular one.

Ind.—*Spangler v. State*, 607 N.E.2d 720 (Ind. 1993).

Mail

Due process does not require proof of actual receipt of mail by the addressee; what is required is notice reasonably calculated under all circumstances to apprise the party of the pendency of the action and provide an opportunity to be heard.

Wash.—*In re Marriage of McLean*, 132 Wash. 2d 301, 937 P.2d 602 (1997).

Failure to open certified letter

Okla.—*Shamblin v. Beasley*, 1998 OK 88, 967 P.2d 1200 (Okla. 1998), as corrected, (Jan. 28, 1999).

Fla.—*Corrigan v. Corrigan*, 184 So. 2d 664 (Fla. 4th DCA 1966).

Ill.—*Dobrowolski v. LaPorte*, 38 Ill. App. 3d 492, 348 N.E.2d 237 (1st Dist. 1976).

Ky.—*Cox v. Rueff Lighting Co.*, 589 S.W.2d 606 (Ky. Ct. App. 1979).

N.C.—*Chadbourn, Inc. v. Katz*, 285 N.C. 700, 208 S.E.2d 676 (1974).

Ohio—*Mitchell v. Mitchell*, 64 Ohio St. 2d 49, 18 Ohio Op. 3d 254, 413 N.E.2d 1182 (1980).

R.I.—*In re Estate of Santoro*, 572 A.2d 298 (R.I. 1990).

Tex.—*Butler v. Butler*, 577 S.W.2d 501 (Tex. Civ. App. Texarkana 1978), dismissed, (June 13, 1979).

Wash.—*Martin v. Meier*, 111 Wash. 2d 471, 760 P.2d 925 (1988).

Kan.—*Gideon v. Gates*, 5 Kan. App. 2d 23, 611 P.2d 166 (1980).

N.M.—*Moya v. Catholic Archdiocese of New Mexico*, 1988-NMSC-048, 107 N.M. 245, 755 P.2d 583 (1988).

N.D.—*Farm Credit Bank of St. Paul v. Stedman*, 449 N.W.2d 562 (N.D. 1989).

Abode service not meeting standard

The mere leaving of copy of suit at the residence of the defendant, as authorized by an abode service statute, is not reasonably calculated to apprise the defendant of the pendency of an action since one may be absent from the residence for an extended length of time, or may be in the process of moving, or the process may be destroyed by inclement weather or removed by other persons.

Ga.—*Womble v. Commercial Credit Corp.*, 231 Ga. 569, 203 S.E.2d 204 (1974).

D.C.—*Eastern Indem. Co. of Maryland v. Content*, 543 A.2d 1361 (D.C. 1988).

Kan.—*Board of County Comr's of Reno County v. Akins*, 271 Kan. 192, 21 P.3d 535 (2001).

Ga.—*Melton v. Johnson*, 242 Ga. 400, 249 S.E.2d 82 (1978).

Idaho—*Evans v. Galloway*, 108 Idaho 711, 701 P.2d 659 (1985).

Miss.—*Mosby v. Gandy*, 375 So. 2d 1024 (Miss. 1979).

Mont.—*Lewis v. Lewis*, 239 Mont. 505, 784 P.2d 897 (1989).

Okla.—*Panhandle Royalty Co. v. Farni*, 1987 OK 89, 747 P.2d 932 (Okla. 1987).

Standard

The standard of adequacy, for due process purposes, of notice by publication is whether the means selected was reasonably calculated to reach interested parties and whether party giving notice exercised due diligence to ascertain the identities of interested parties.

Colo.—*Rael v. Taylor*, 876 P.2d 1210 (Colo. 1994).

Okla.—*Forest Oil Corp. v. Corporation Com'n of Oklahoma*, 1990 OK 58, 807 P.2d 774 (Okla. 1990).

Ga.—*McDade v. McDade*, 263 Ga. 456, 435 S.E.2d 24 (1993).

- 10 Kan.—[Board of County Comr's of Reno County v. Akins](#), 271 Kan. 192, 21 P.3d 535 (2001).
Mont.—[In re Marriage of Shikany](#), 268 Mont. 493, 887 P.2d 153 (1994).
11 Okla.—[Vance v. Federal Nat. Mortg. Ass'n](#), 1999 OK 73, 988 P.2d 1275 (Okla. 1999).
Alaska—[Aguchak v. Montgomery Ward Co., Inc.](#), 520 P.2d 1352 (Alaska 1974).
Ind.—[Glennar Mercury-Lincoln, Inc. v. Riley](#), 167 Ind. App. 144, 338 N.E.2d 670 (1975).
Mich.—[Moyer v. Lott](#), 86 Mich. App. 186, 272 N.W.2d 232 (1978).
N.J.—[W.S. Frey Co., Inc. v. Heath](#), 158 N.J. 321, 729 A.2d 1037 (1999).
12 Okla.—[Shamblin v. Beasley](#), 1998 OK 88, 967 P.2d 1200 (Okla. 1998), as corrected, (Jan. 28, 1999).

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16D C.J.S. Constitutional Law § 1952

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

4. Process or Notice

b. Service of Process

§ 1952. Personal or substituted service

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3881, 3953, 3972 to 3979

Although the distinction between in personam and in rem actions is no longer strictly followed with regard to service of process, it is generally held that personal service or consent to the exercise of jurisdiction is a due process requirement for obtaining a personal judgment while substituted or constructive service is sufficient to confer in rem jurisdiction.

Due process requires personal service to support a personal judgment.¹ Thus, when the proceeding is strictly in personam, brought to determine the personal rights and obligations of the parties, personal service or a voluntary appearance in the case is essential to the acquisition of jurisdiction so as to constitute compliance with the constitutional requirement of due process,² and personal service within the jurisdiction is one method of giving adequate notice.³ However, it has been stated that the thrust of the Supreme Court decision on the sufficiency of process⁴ is a balancing of interests; thus, there is no rigid rule that the U.S. Constitution requires reasonable assurance of actual notice for an in personam judgment so long as the means of notice employed is the best available in the circumstance.⁵ Consent or waiver may confer jurisdiction in personam without personal service of process.⁶

Due process does not require personal service where personal judgments are not involved.⁷ Thus, while the characterization of interests as in rem or in personam is irrelevant, for the federal due process requirement of notice,⁸ since the owner of the property must be given due notice that his or her interest may be affected in the action, substituted or constructive service may be sufficient to constitute due process in such cases.⁹

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Footnotes

- 1 U.S.—*Amen v. City of Dearborn*, 532 F.2d 554, 21 Fed. R. Serv. 2d 669 (6th Cir. 1976).
Ala.—*Woodfin v. Curry*, 228 Ala. 436, 153 So. 620 (1934).
Ga.—*Railey v. State Farm Mut. Auto. Ins. Co.*, 129 Ga. App. 875, 201 S.E.2d 628 (1973).
Miss.—*American Cas. Co. of Reading, Pa. v. Kincade*, 219 Miss. 653, 69 So. 2d 820 (1954).
N.J.—*Neustadter v. United Exposition Service Co.*, 14 N.J. Super. 484, 82 A.2d 476 (Ch. Div. 1951).
- 2 U.S.—*Griffin v. Griffin*, 327 U.S. 220, 66 S. Ct. 556, 90 L. Ed. 635 (1946); *International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95, 161 A.L.R. 1057 (1945).
Appearance by prisoner pro se
Wis.—*Piper v. Popp*, 167 Wis. 2d 633, 482 N.W.2d 353 (1992).
- 3 U.S.—*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).
- 4 U.S.—*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).
- 5 Utah—*Carlson v. Bos*, 740 P.2d 1269 (Utah 1987).
As to the sufficiency of service, see § 1951.
- 6 Ark.—*Southeast Foods, Inc. v. Keener*, 335 Ark. 209, 979 S.W.2d 885 (1998).
- 7 U.S.—*Jardine, Gill & Duffus, Inc. v. M/V Cassiopeia*, 523 F. Supp. 1076, 32 Fed. R. Serv. 2d 1559 (D. Md. 1981).
Del.—*Grossman v. Liberty Leasing Co., Inc.*, 295 A.2d 749 (Del. Ch. 1972).
- 8 Utah—*Carlson v. Bos*, 740 P.2d 1269 (Utah 1987).
- 9 U.S.—*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).
Publication
Service by publication satisfies due process minimum notice requirements where the proceeding merely determines ownership of property, the defendant does not reside in the state, and the defendant's address is not ascertainable.
Ariz.—*Mervyn's, Inc. v. Superior Court In and For Maricopa County*, 144 Ariz. 297, 697 P.2d 690 (1985).
Garnishment
If due process does not require more reliable means, service by publication is permitted to join interested parties under a garnishment statute in addition to the defendant as reflected by the garnishee's answer.
Ariz.—*Mervyn's, Inc. v. Superior Court In and For Maricopa County*, 144 Ariz. 297, 697 P.2d 690 (1985).

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16D C.J.S. Constitutional Law § 1953

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

4. Process or Notice

b. Service of Process

§ 1953. Nonresident defendants

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3881, 3953, 3972 to 3979

Due process requires that a court secure jurisdiction over a nonresident defendant by service of process in a manner consistent with the Due Process Clause.

To sustain an action against a nonresident, a court must have jurisdiction of person of the defendant secured by service of process authorized by law and consistent with the requirements of the Due Process Clause.¹ In the case of a nonresident, personal service of process or a voluntary appearance is ordinarily considered essential to rendition of a personal judgment under due process,² and service by publication is insufficient.³

A statute prescribing a manner of effecting service on a foreign corporation not authorized or licensed to do business in a state satisfies due process if it provides for giving adequate notice of the pending litigation.⁴ For instance, service on a nonresident corporation by registered mail is reasonably calculated to apprise the defendant of the pendency of the action and thus meets due process requirements.⁵

Service of process on a nonresident defendant not personally within the state, such as under a long-arm statute,⁶ is consistent with due process where the nonresident has certain minimum contacts with the State.⁷ However, while authorized by a long-arm act, initial service of process by first-class mail is not constitutionally sufficient to confer in personam jurisdiction over a nonresident defendant since it is not reasonably calculated to reach those who could easily be informed by other means of service.⁸

Service on a nonresident defendant may constitute due process where the nonresident has previously submitted to the court's jurisdiction.⁹ Thus, a judgment may be rendered on a counterclaim against a nonresident plaintiff, by serving the appropriate pleading on the plaintiff's attorney of record without violating due process, as it is reasonable to treat the plaintiff, who had submitted to the court's jurisdiction, as being there for all purposes.¹⁰ However, due process forbids an adjudication against a nonresident defendant, who has appeared generally, on additional or distinct claims, without the defendant's consent, unless the defendant counterclaimed or invoked the court's affirmative assistance.¹¹

The nonresidence of the interested parties will not render invalid, under due process requirements, the rendition of a judgment on a cause of action arising between nonresidents where legal service can be made on the defendant.¹²

It is not a denial of due process for a state to fail to furnish a resident the power to sue a nonresident corporation on a cause of action arising in another state since a provision for making foreign corporations subject to service in the state is a matter of legislative discretion.¹³

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Footnotes

- 1 U.S.—*Pink v. A.A.A. Highway Exp.*, 314 U.S. 201, 62 S. Ct. 241, 86 L. Ed. 152, 137 A.L.R. 957 (1941).
- 2 Fla.—*Newton v. Bryan*, 142 Fla. 14, 194 So. 282 (1940).
Mo.—*Union Nat. Bank of Wichita, Kan. v. Lamb*, 360 Mo. 81, 227 S.W.2d 60 (1950).
N.J.—*Yarborough v. Slokum*, 130 N.J.L. 565, 33 A.2d 905 (N.J. Ct. Err. & App. 1943).
N.C.—*Pridgen v. Pridgen*, 203 N.C. 533, 166 S.E. 591 (1932).
Ohio—*Ades v. Ades*, 70 Ohio App. 487, 25 Ohio Op. 214, 37 Ohio L. Abs. 58, 45 N.E.2d 416 (1st Dist. Hamilton County 1942).
- 3 Mo.—*Union Nat. Bank of Wichita, Kan. v. Lamb*, 360 Mo. 81, 227 S.W.2d 60 (1950).
Wis.—*Sheehan v. Matthew*, 258 Wis. 606, 46 N.W.2d 752 (1951).
- 4 Ind.—*Shotwell v. Cliff Hagan Ribeye Franchise, Inc.*, 572 N.E.2d 487 (Ind. 1991).
- 5 N.C.—*Poole v. Hanover Brook, Inc.*, 34 N.C. App. 550, 239 S.E.2d 479 (1977).
- 6 Ala.—*DeSotacho, Inc. v. Valnit Industries, Inc.*, 350 So. 2d 447 (Ala. 1977).
Fla.—*Dublin Co. v. Peninsular Supply Co.*, 309 So. 2d 207 (Fla. 4th DCA 1975).
Ga.—*Whitaker v. Whitaker*, 237 Ga. 895, 230 S.E.2d 486 (1976).
Kan.—*Woodring v. Hall*, 200 Kan. 597, 438 P.2d 135 (1968).
N.H.—*Bouchard v. Klepacki*, 116 N.H. 257, 357 A.2d 463 (1976).
Nev.—*Certain-Teed Products Corp. v. Second Judicial Dist. Court*, 87 Nev. 18, 479 P.2d 781 (1971).
- 7 U.S.—*International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95, 161 A.L.R. 1057 (1945).
The minimum contact requirement with regard to the exercise of jurisdiction is discussed in § 1937.
- 8 Md.—*Miserandino v. Resort Properties, Inc.*, 345 Md. 43, 691 A.2d 208 (1997).
- 9 Nev.—*Lagemann v. Lagemann*, 65 Nev. 373, 196 P.2d 1018 (1948).
- 10 U.S.—*Adam v. Saenger*, 303 U.S. 59, 58 S. Ct. 454, 82 L. Ed. 649 (1938).
- 11 N.J.—*Republic of China v. Pong-Tsu Mow*, 33 N.J. Super. 24, 108 A.2d 891 (Law Div. 1954).

- 12 Ala.—Jefferson Island Salt Co. v. E.J. Longyear Co., 210 Ala. 352, 98 So. 119 (1923).
13 U.S.—Perkins v. Benguet Consol. Min. Co., 342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485, 63 Ohio L. Abs. 146
(1952); Missouri Pac. R. Co. v. Clarendon Boat Oar Co., 257 U.S. 533, 42 S. Ct. 210, 66 L. Ed. 354 (1922).

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16D C.J.S. Constitutional Law § 1954

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

4. Process or Notice

b. Service of Process

§ 1954. Nonresident defendants—Service on agent or state official

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3977(1), 3977(2)

Service on a nonresident's resident agent, or on a state official, such as a secretary of state, deemed to be the defendant's agent under a nonresident motorist or corporation act, satisfies due process.

In the case of nonresident individuals, unincorporated associations, or partnerships doing business within a state, service on a resident agent is sufficient to confer jurisdiction within the requirements of due process.¹ For service on an agent to meet due process requirements, the person served must have sufficient authority as will justify the conclusion that he or she is a representative of the corporation within the jurisdiction,² such as a general or office manager,³ at the time of service.⁴

When regulating matters affecting public health and safety, a state may properly provide for constructive or substituted service on nonresidents without violating due process requirements,⁵ as in the case of use of the highways by nonresidents,⁶ in which case service may be made on the secretary of state⁷ or on the nonresident defendant's liability insurer,⁸ so long as the method used makes it reasonably probable that the defendant will receive actual notice as a result of the constructive service,⁹ such

as by a requirement that, in addition to serving the secretary of state or the commissioner of motor vehicles, a copy of the process must also be delivered to the defendant.¹⁰ Due process requires that a plaintiff exercise due diligence in attempting to locate an absent defendant before serving process under a nonresident motorist statute.¹¹ Also, a state's long-arm act may, without violating due process, authorize service on a secretary of state, who is required to mail the summons and complaint to a nonresident defendant.¹²

Statutes prescribing the mode of service and designating the agent of the foreign corporation to be served, or the state official deemed to be the corporation's agent, are valid where they afford due process.¹³ A statute providing that, on a corporation's failure to appoint or retain an agent, process against the corporation may be served on a public official, designated by statute, does not deny due process.¹⁴ A statute requiring that a foreign corporation designate an agent empowered to accept service within a state does not deny due process because it does not expressly require that the agent give the corporation notice when served with process.¹⁵

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Footnotes

- 1 U.S.—*Henry L. Doherty & Co. v. Goodman*, 294 U.S. 623, 55 S. Ct. 553, 79 L. Ed. 1097 (1935).
- 2 U.S.—*Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485, 63 Ohio L. Abs. 146 (1952); *International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95, 161 A.L.R. 1057 (1945).
- 3 U.S.—*Bobrick Corp. v. American Dispenser Co.*, 377 F.2d 334, 11 Fed. R. Serv. 2d 262 (9th Cir. 1967).
Ala.—*St. Mary's Oil Engine Co. v. Jackson Ice & Fuel Co.*, 224 Ala. 152, 138 So. 834 (1931).
- 4 Iowa—*Elk River Coal & Lumber Co. v. Funk*, 222 Iowa 1222, 271 N.W. 204, 110 A.L.R. 1415 (1937).
- 5 U.S.—*Henry L. Doherty & Co. v. Goodman*, 294 U.S. 623, 55 S. Ct. 553, 79 L. Ed. 1097 (1935).
Bar complaint
Service of a bar complaint upon the state supreme court clerk under a rule for out-of-state service was sufficient to satisfy the due process rights of an attorney who was incarcerated in another state and acknowledged receipt of the complaint and notice of the hearing.
Ariz.—*Matter of Smith*, 164 Ariz. 526, 794 P.2d 601 (1990).
- 6 U.S.—*Olberding v. Illinois Cent. R. Co.*, 346 U.S. 338, 74 S. Ct. 83, 98 L. Ed. 39 (1953); *Hess v. Pawloski*, 274 U.S. 352, 47 S. Ct. 632, 71 L. Ed. 1091 (1927).
Ark.—*Halliman v. Stiles*, 250 Ark. 249, 464 S.W.2d 573 (1971).
- 7 Ark.—*Alexander v. Bush*, 199 Ark. 562, 134 S.W.2d 519 (1939).
Del.—*Sommers v. Gaston*, 295 A.2d 578 (Del. Super. Ct. 1972).
Mont.—*State ex rel. Charette v. District Court of Second Judicial Dist. in and for Silver Bow County*, 107 Mont. 489, 86 P.2d 750 (1939).
- 8 Mich.—*Krueger v. Williams*, 410 Mich. 144, 300 N.W.2d 910, 17 A.L.R.4th 902 (1981).
N.J.—*Rudikoff v. Byrne*, 101 N.J. Super. 29, 242 A.2d 880 (Law Div. 1968).
W. Va.—*Hartwell v. Marquez*, 201 W. Va. 433, 498 S.E.2d 1 (1997).
- 9 U.S.—*Olberding v. Illinois Cent. R. Co.*, 346 U.S. 338, 74 S. Ct. 83, 98 L. Ed. 39 (1953); *Milliken v. Meyer*, 311 U.S. 457, 61 S. Ct. 339, 85 L. Ed. 278, 132 A.L.R. 1357 (1940); *Wuchter v. Pizzutti*, 276 U.S. 13, 48 S. Ct. 259, 72 L. Ed. 446, 57 A.L.R. 1230 (1928).
- 10 Vt.—*Brammall v. LaRose*, 105 Vt. 345, 165 A. 916 (1933).
- 11 Nev.—*Browning v. Dixon*, 114 Nev. 213, 954 P.2d 741 (1998).
Utah—*Carlson v. Bos*, 740 P.2d 1269 (Utah 1987).
Wyo.—*Colley v. Dyer*, 821 P.2d 565 (Wyo. 1991).
- 12 Ark.—*Kricfalusi v. Brokers Securities, Inc.*, 305 Ark. 228, 806 S.W.2d 622 (1991) (applying a Virginia statute when recognizing a Virginia judgment).
- 13 U.S.—*State of Washington ex rel. Bond & Goodwin & Tucker v. Superior Court of State of Washington for Spokane County*, 289 U.S. 361, 53 S. Ct. 624, 77 L. Ed. 1256, 89 A.L.R. 653 (1933).

Unsuccessful attempt to serve agent

A corporation was not denied due process where the plaintiff diligently but unsuccessfully attempted service on its registered agent before effectuating service through the secretary of state.

Tex.—*TXXN, Inc. v. D/FW Steel Co.*, 632 S.W.2d 706 (Tex. App. Fort Worth 1982).

14 U.S.—*State of Washington ex rel. Bond & Goodwin & Tucker v. Superior Court of State of Washington for Spokane County*, 289 U.S. 361, 53 S. Ct. 624, 77 L. Ed. 1256, 89 A.L.R. 653 (1933); *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill. Co.*, 243 U.S. 93, 37 S. Ct. 344, 61 L. Ed. 610 (1917).

15 U.S.—*State of Washington ex rel. Bond & Goodwin & Tucker v. Superior Court of State of Washington for Spokane County*, 289 U.S. 361, 53 S. Ct. 624, 77 L. Ed. 1256, 89 A.L.R. 653 (1933).

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16D C.J.S. Constitutional Law § 1955

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

5. Pleading

§ 1955. Failure to comply with pleading rules as denial of due process

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3984

The failure to comply with certain rules of pleading may constitute a denial of due process, and a defendant is entitled to an opportunity to respond.

The failure to comply with certain rules of pleading may constitute a denial of due process¹ although a failure to verify a complaint does not result in a violation, where no prejudice is shown, and in any event, the plaintiff must prove the allegations at trial.²

It is fundamental to the concept of due process that a complaint give notice of the filing of a lawsuit and of the specific relief sought.³ Under fundamental concepts of due process, a defendant in a civil action is entitled to be apprised of the nature of the claim with such definiteness that a person of reasonable intelligence is able to understand the allegations and respond to the complaint.⁴ However, due process is not denied so long as the defendant has notice of the plaintiff's theory,⁵ the material facts are raised in a manner that provides ample time to defend,⁶ and under a prayer for relief as the court might deem proper, the defendant had sufficient opportunity to prepare and present a defense.⁷

Due process requires an opportunity to answer all original⁸ and amended pleadings.⁹

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Footnotes

- 1 Del.—*G.S.G. v. P.S.G.*, 412 A.2d 319 (Del. 1980).
D.C.—*Witteck v. U.S.*, 54 A.2d 747 (Mun. Ct. App. D.C. 1947).
Fla.—*Kamensky v. Kamensky*, 282 So. 2d 670 (Fla. 2d DCA 1973).
- 2 Conn.—*Gluck v. Gluck*, 181 Conn. 225, 435 A.2d 35 (1980).
- 3 Cal.—*In re Marriage of Lippel*, 51 Cal. 3d 1160, 276 Cal. Rptr. 290, 801 P.2d 1041, 5 A.L.R.5th 1156 (1990).
As to a judgment for relief in excess of that demanded, see § 1982.
- 4 W. Va.—*State ex rel. Frieson v. Isner*, 168 W. Va. 758, 285 S.E.2d 641 (1981).
- 5 Vt.—*Kelly v. Lord*, 173 Vt. 21, 783 A.2d 974 (2001).
- 6 Ill.—*La Salle Nat. Bank v. International Limited*, 129 Ill. App. 2d 381, 263 N.E.2d 506 (2d Dist. 1970).
As to due process requiring an opportunity to be heard and defend, see § 1964.
- 7 **Removal of trustee**
Wash.—*Fred Hutchinson Cancer Research Center v. Holman*, 107 Wash. 2d 693, 732 P.2d 974 (1987).
- 8 Ariz.—*In re Lewkowitz*, 70 Ariz. 325, 220 P.2d 229 (1950).
Fla.—*Goodson v. Caldreon*, 265 So. 2d 74 (Fla. 1st DCA 1972).
Ill.—*Gorin v. McFarland*, 80 Ill. App. 2d 398, 224 N.E.2d 615 (4th Dist. 1967).
- 9 U.S.—*Abels v. JBC Legal Group, P.C.*, 229 F.R.D. 152, 62 Fed. R. Serv. 3d 270 (N.D. Cal. 2005).

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16D C.J.S. Constitutional Law § 1956

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

5. Pleading

§ 1956. Rulings relating to pleadings

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3984

Rulings on such motions as for an extension of time to plead or to amend deny due process only if a party's substantial rights are materially infringed.

Court rulings in connection with pleadings may constitute a denial of due process where they adversely affect a party's material and substantial rights, such as to file a responsive pleading,¹ but will not be deemed to deny due process if there is no material or substantial injury to the party concerned as where the ruling, even if erroneous, is merely incidental and subject to correction.²

In the absence of harm to an opposing party, there is no denial of due process in extending the time to answer³ without notice to the opposing party.⁴

The constitutional guarantee of due process does not forbid the allowance of amendments to pleadings,⁵ including at trial, if the defendant is provided an opportunity to be heard or to conform to the proof.⁶ However, due process rights are not necessarily

violated by the denial of a motion to supplement pleadings where basic notions of fair play are not offended by limiting the issues to those already pleaded and argued.⁷

Conversely, allowing a party to amend the pleadings raises a due process question where the defendant may not have had an adequate opportunity to prepare a case on the new issues raised by the amended pleadings.⁸ Thus, while it has been said that the pleadings may be amended during very late stages of the litigation, even after trial, but only when there is no denial of due process,⁹ the amendment of the pleadings after judgment violates both the applicable rule¹⁰ and due process where a defendant is given no opportunity to defend.¹¹

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Footnotes

- 1 W. Va.—[Simpson v. Stanton](#), 119 W. Va. 235, 193 S.E. 64 (1937).
- 2 Cal.—[Matteson v. Board of Ed. of City of Los Angeles](#), 104 Cal. App. 647, 286 P. 482 (2d Dist. 1930).
La.—[Davis v. New Orleans Public Belt R.R.](#), 159 La. 431, 105 So. 421 (1925).
Mass.—[Savage v. Walshe](#) (State Report Title: [Savage v. Welch](#)), 246 Mass. 170, 140 N.E. 787 (1923).
N.M.—[Dreyfus v. City of Socorro](#), 1920-NMSC-035, 26 N.M. 127, 189 P. 878 (1920).
- 3 Ga.—[Beavers v. Smith](#), 227 Ga. 344, 180 S.E.2d 717 (1971).
- 4 Ill.—[People ex rel. Hamer v. Jones](#), 39 Ill. 2d 360, 235 N.E.2d 589 (1968).
- 5 Mass.—[Pizer v. Hunt](#), 253 Mass. 321, 148 N.E. 801 (1925).
N.J.—[Evans v. Rosenberg](#), 1 N.J. 590, 65 A.2d 55 (1949).
- 6 Mass.—[Bucholz v. Green Bros. Co.](#), 290 Mass. 350, 195 N.E. 318 (1935).
N.M.—[Schmitz v. Smentowski](#), 1990-NMSC-002, 109 N.M. 386, 785 P.2d 726 (1990).
Pa.—[In re Adoption of Noone](#), 376 Pa. 437, 103 A.2d 729 (1954).
W. Va.—[Paull v. Cook](#), 135 W. Va. 833, 65 S.E.2d 750 (1951).
Wyo.—[J Bar H, Inc. v. Johnson](#), 822 P.2d 849 (Wyo. 1991).
As to due process requiring an opportunity to be heard and defend, see § 1964.
- 7 Or.—[Vogl v. Department of Revenue](#), 327 Or. 193, 960 P.2d 373 (1998).
- 8 Mont.—[In re T.C.](#), 2001 MT 264, 307 Mont. 244, 37 P.3d 70 (2001).
- 9 Fla.—[Pro-Art Dental Lab, Inc. v. V-Strategic Group, LLC](#), 986 So. 2d 1244 (Fla. 2008).
R.I.—[Arnold Road Realty Associates, LLC v. Tiogue Fire Dist.](#), 873 A.2d 119 (R.I. 2005).
- 10 Fed. R. Civ. P. 15.
- 11 U.S.—[Nelson v. Adams USA, Inc.](#), 529 U.S. 460, 120 S. Ct. 1579, 146 L. Ed. 2d 530, 46 Fed. R. Serv. 3d 1 (2000).
As to the modification of the judgment, see § 1989.

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XXI. Civil Proceedings and Due Process; Administrative Proceedings

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5. Pleading

§ 1957. Dismissal or striking of pleading

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West's Key Number Digest

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While orders dismissing a case or striking pleadings may violate due process if the right to a hearing is improperly denied, a court may strike pleadings as a sanction if a party has suppressed information relevant to the case or dismiss an insufficient complaint.

Due process is not denied by the dismissal of an insufficient or defective pleading.¹ However, a plaintiff was denied a right under a state constitution to a fair and impartial hearing, where a trial court dismissed a complaint sua sponte, absent any motion by the defendant for judgment on the pleadings.² The dismissal of a claim as a sanction satisfies due process if there is a close nexus between the party's misconduct in suppressing information relevant to the opponent's defense and the merits of the case.³

In light of the due process right to be heard and defend,⁴ a civil defendant's fugitive status does not justify striking the fugitive's answer and entering a default judgment where the defendant's absence is unrelated to the merits of the civil action, and the defendant has not failed to comply with discovery requests or otherwise interfered with the plaintiff's ability to collect evidence.⁵

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Footnotes

- 1 Ill.—[Deasey v. City of Chicago](#), 412 Ill. 151, 105 N.E.2d 727 (1952).
Dismissal without further explanation
Ohio—[State ex rel. Brody v. Peltier](#), 27 Ohio App. 3d 20, 499 N.E.2d 910 (10th Dist. Franklin County 1985).
- 2 Ohio—[Am. Gen. Finance v. Beemer](#), 73 Ohio App. 3d 684, 598 N.E.2d 144 (3d Dist. Allen County 1991).
- 3 U.S.—[Anheuser-Busch, Inc. v. Natural Beverage Distributors](#), 69 F.3d 337, 33 Fed. R. Serv. 3d 266 (9th Cir. 1995).
As to discovery sanctions, see § 1971.
- 4 §§ 1964 et seq.
- 5 Cal.—[Doe v. Superior Court](#), 222 Cal. App. 3d 1406, 272 Cal. Rptr. 474 (2d Dist. 1990).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

6. Evidence

§ 1958. Rules of evidence

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4000 to 4006

Rules of evidence are subject to due process requirements.

The power of a legislature to prescribe rules of evidence is limited by the constitutional guarantee of due process.¹ To be consistent with due process, rules of evidence must be reasonable and afford an opportunity for a defense.² State law evidentiary procedures are not subject to proscription under the Due Process Clause unless they offend some principle of justice so rooted in the traditions and conscience of the people as to be ranked as fundamental.³ Within these parameters, rules may be changed or abolished.⁴ Changes to the rules of evidence may be made applicable to existing causes of action,⁵ and even to pending cases,⁶ so long as a reasonable opportunity to present all pertinent and material evidence, without the imposition of burdensome restrictions, is preserved.⁷

The constitutional right to a fair trial does not preclude a trial court from exercising its discretion to restrict cross-examination of a witness when it is for an improper purpose, such as to harass, annoy, or humiliate, or if the questions are irrelevant or of no probative value.⁸ On the other hand, a trial court's decision, without warning, to allow a party only one additional

rebuttal witness, made under a rule permitting a court to exclude evidence if its probative value is substantially outweighed by considerations such as undue delay, infringing upon the constitutional right to be heard where the decision was made without inquiring into whether there was anything new to present, and no allowance was made for a possibility that any of the evidence could be other than cumulative.⁹ The minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected but also a societal judgment about how the risk of error should be distributed between the litigants.¹⁰

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Footnotes

- 1 Me.—[Warren v. Waterville Urban Renewal Authority](#), 235 A.2d 295 (Me. 1967).
- 2 U.S.—[Crowell v. Benson](#), 285 U.S. 22, 52 S. Ct. 285, 76 L. Ed. 598 (1932).
Ala.—[Industrial Chemical & Fiberglass Corp. v. Chandler](#), 547 So. 2d 812, 75 A.L.R.4th 123 (Ala. 1988).
- 3 U.S.—[Garuti v. Roden](#), 733 F.3d 18 (1st Cir. 2013).
- 4 N.Y.—["HH" v. "II,"](#) 31 N.Y.2d 154, 335 N.Y.S.2d 274, 286 N.E.2d 717 (1972).
Collateral source rule
A medical malpractice act, which abolishes the collateral source evidentiary rule, does not deny medical malpractice claimants due process.
Ariz.—[Eastin v. Broomfield](#), 116 Ariz. 576, 570 P.2d 744 (1977).
- 5 U.S.—[Easterling Lumber Co. v. Pierce](#), 235 U.S. 380, 35 S. Ct. 133, 59 L. Ed. 279 (1914).
- 6 U.S.—[Reitler v. Harris](#), 223 U.S. 437, 32 S. Ct. 248, 56 L. Ed. 497 (1912).
Kan.—[Richardson v. Kansas Soldiers' Compensation Board](#), 150 Kan. 343, 92 P.2d 114 (1939).
- 7 Minn.—[Yeager v. Chapman](#), 233 Minn. 1, 45 N.W.2d 776, 22 A.L.R.2d 1260 (1951).
- 8 R.I.—[State v. Lamoureux](#), 623 A.2d 9 (R.I. 1993).
As to the right to present evidence and cross-examine, see § 1980.
- 9 Wyo.—[Hall v. Hall](#), 708 P.2d 416 (Wyo. 1985).
- 10 Ariz.—[Kent K. v. Bobby M.](#), 210 Ariz. 279, 110 P.3d 1013 (2005).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

6. Evidence

§ 1959. Admissibility

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4000 to 4006

Rules governing the admissibility of evidence are consistent with due process unless the right to present a case before the court is infringed.

Legislative limitations on use of evidence do not violate due process if the purpose of the legislation is rational and free from invidious discrimination.¹ Courts have upheld, in the face of due process challenges, statutes or rules dealing with the admissibility of evidence on the issue of credibility,² blood tests in paternity actions,³ use of seat belts,⁴ a mediation panel's recommendation in a medical malpractice case,⁵ written medical reports,⁶ and privileged communications.⁷ Nevertheless, a party is entitled to introduce evidence in support of his or her contentions⁸ and to have testimony submitted by witnesses whom the trial court has seen and heard.⁹ However, due process does not require the admission of evidence that is not germane to the issues raised by the pleadings,¹⁰ nor does it require that a court listen to facts that the law treats as having no legal significance.¹¹ For instance, a refusal to allow a jury in a products liability action to consider prior awards of punitive damages for the same course of conduct does not violate due process.¹² An evidence rule prohibiting inquiry into the internal workings of juries does not violate due process as a party may attack a verdict if it is not supported by the evidence.¹³

Dead man's statutes do not deny due process.¹⁴ A statute on the qualification of medical expert witnesses does not violate due process if it has a rational basis.¹⁵

While the evidence rules guide a determination whether the admission or exclusion of particular items of evidence would violate due process,¹⁶ the admission or exclusion of evidence, even if erroneous, does not necessarily constitute a denial of due process¹⁷ although it is a denial of due process to preclude a party entirely from offering evidence in support of his or her position.¹⁸

The Fourteenth Amendment does not require the application of the exclusionary rule in civil actions where private parties seek to introduce evidence obtained through unauthorized searches made by state officials.¹⁹

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Footnotes

- 1 Me.—*Caron v. Scott Paper Co.*, 448 A.2d 329 (Me. 1982).
- 2 **Traffic convictions**
Mich.—*Azzaro v. Stupar*, 17 Mich. App. 170, 169 N.W.2d 151 (1969).
- 3 Mich.—*Cardenas v. Chavez*, 103 Mich. App. 646, 303 N.W.2d 3 (1980).
- 4 **Evidence barred by statute**
Minn.—*Olson v. Ford Motor Co.*, 558 N.W.2d 491 (Minn. 1997).
- 5 N.Y.—*Treyball v. Clark*, 65 N.Y.2d 589, 493 N.Y.S.2d 1004, 483 N.E.2d 1136 (1985).
- 6 Ga.—*Bell v. Austin*, 278 Ga. 844, 607 S.E.2d 569 (2005).
- 7 Miss.—*Whitney Nat. Bank v. Stirling*, 177 Miss. 325, 170 So. 692 (1936).
Newspaper reporter's source
U.S.—*Ex parte Sparrow*, 14 F.R.D. 351 (N.D. Ala. 1953).
- 8 U.S.—*U.S. v. Carolene Products Co.*, 304 U.S. 144, 58 S. Ct. 778, 82 L. Ed. 1234 (1938); *Anniston Mfg. Co. v. Davis*, 301 U.S. 337, 57 S. Ct. 816, 81 L. Ed. 1143 (1937).
Kan.—*Cities Service Oil Co. v. State Corp. Commission*, 207 Kan. 43, 483 P.2d 1123 (1971).
Minn.—*State v. Sax*, 231 Minn. 1, 42 N.W.2d 680, 18 A.L.R.2d 929 (1950).
W. Va.—*In re Eastern Associated Coal Corp.*, 157 W. Va. 749, 204 S.E.2d 71 (1974).
As to the right to hearing encompassing the right to introduce evidence, see § 1980.
- 9 U.S.—*Smith v. Dental Products Co.*, 168 F.2d 516 (C.C.A. 7th Cir. 1948).
Pa.—*Com. ex rel. Valentine v. Strongel*, 246 Pa. Super. 466, 371 A.2d 931 (1977).
As to deposition testimony, see § 1960.
- 10 Ill.—*Rhodes v. Anderson*, 39 Ill. App. 3d 208, 349 N.E.2d 113 (3d Dist. 1976).
Pa.—*Liberty Corp. v. D'Amico*, 457 Pa. 181, 329 A.2d 222 (1974).
- 11 U.S.—*Murphy v. Houma Well Service*, 413 F.2d 509 (5th Cir. 1969).
- 12 Md.—*Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 601 A.2d 633 (1992).
- 13 N.D.—*Andrews v. O'Hearn*, 387 N.W.2d 716 (N.D. 1986).
As restrictions on impeaching a jury's verdict, generally, see § 1972.
- 14 Colo.—*Music City, Inc. v. Duncan's Estate*, 185 Colo. 245, 523 P.2d 983 (1974).
Iowa—*Adams v. Bonacci*, 287 N.W.2d 154 (Iowa 1980).
Ohio—*Russell v. Wolford*, 60 Ohio App. 2d 134, 14 Ohio Op. 3d 105, 395 N.E.2d 904 (10th Dist. Franklin County 1978).
- 15 Tenn.—*Sutphin v. Platt*, 720 S.W.2d 455 (Tenn. 1986).
- 16 Neb.—*In re Interest of Kassara M.*, 258 Neb. 90, 601 N.W.2d 917 (1999).
- 17 Cal.—*Fleming v. Bennett*, 18 Cal. 2d 518, 116 P.2d 442 (1941).
Ill.—*Rhodes v. Anderson*, 39 Ill. App. 3d 208, 349 N.E.2d 113 (3d Dist. 1976).
Ky.—*O'Brien v. O'Brien*, 294 Ky. 793, 172 S.W.2d 595 (1942).
Mo.—*State ex rel. Foster v. Price*, 414 S.W.2d 295 (Mo. 1967).

Pa.—[In re Pusey's Estate](#), 321 Pa. 248, 184 A. 844 (1936).

Tenn.—[Tennessee Cent. Ry. Co. v. Pharr](#), 183 Tenn. 658, 194 S.W.2d 486 (1946).

Tex.—[Lund v. State](#), 366 S.W.3d 848 (Tex. App. Texarkana 2012), petition for discretionary review refused, (Oct. 24, 2012).

18

Ill.—[Carolene Products Co. v. McLaughlin](#), 365 Ill. 62, 5 N.E.2d 447 (1936).

Mich.—[Kelly v. Ford Motor Co.](#), 280 Mich. 378, 273 N.W. 737 (1937).

Miss.—[Whitley v. City of Meridian](#), 530 So. 2d 1341 (Miss. 1988).

Privilege not waived

In a personal injury suit in which the plaintiff did not waive the physician-patient privilege but introduced doctors' bills under a statute providing for a presumption of their reasonableness, precluding the defendant from examining the physicians as to the reasonableness and necessity of their charges amounted to a due process violation.

Miss.—[McCay v. Jones](#), 354 So. 2d 1095 (Miss. 1978).

19

U.S.—[Medlock v. Trustees of Indiana University](#), 738 F.3d 867, 300 Ed. Law Rep. 36 (7th Cir. 2013);

[Nutrasweet Co. v. X-L Engineering Corp.](#), 926 F. Supp. 767 (N.D. Ill. 1996).

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6. Evidence

§ 1960. Use of depositions as evidence

[Topic Summary](#) | [References](#) | [Correlation Table](#)

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West's Key Number Digest, [Constitutional Law](#)  4000 to 4006

Taking evidence by deposition does not offend due process if procedural requirements are followed.

The taking of evidence by deposition, rather than by the personal attendance of witnesses, does not necessarily violate due process.¹ However, due process requires an adequate showing of a statutory condition justifying the need for the use of the deposition as a necessary prerequisite to finding the deposition admissible.² For instance, a statute allowing the admission of a deposition without showing that the declarant was unavailable as a witness, in addition to violating the usual rules of civil procedure and evidence, denies due process by depriving a party of the opportunity to confront a witness.³ Additionally, the procedure for taking the deposition must be in accordance with due process.⁴

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Footnotes

¹ Ky.—[Dexter v. Spainhoward](#), 563 S.W.2d 474 (Ky. Ct. App. 1978).

Mo.—[State ex rel. Hurwitz v. North](#), 304 Mo. 607, 264 S.W. 678 (1924), [aff'd](#), 271 U.S. 40, 46 S. Ct. 384, 70 L. Ed. 818 (1926).

Fla.—[Haverley v. Clann](#), 196 So. 2d 38 (Fla. 2d DCA 1967).

Fla.—[Grabau v. Department Of Health, Bd. of Psychology](#), 816 So. 2d 701 (Fla. 1st DCA 2002).

Letters rogatory

Pa.—[In re Garrett's Estate](#), 335 Pa. 287, 6 A.2d 858 (1939).

Notice

Ky.—[Armstrong v. Biggs](#), 275 S.W.2d 60 (Ky. 1955).

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6. Evidence

§ 1961. Presumptions and prima facie case

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Rules dealing with presumptions and a prima facie case are upheld if there is a rational relationship between the facts proved and the conclusions drawn, but statutes making certain evidence conclusive may deny the due process right to a hearing.

Legislation creating or destroying presumptions, or specifying what constitutes a prima facie case, is consistent with due process¹ if there is a rational relationship between the facts found and presumed.² Arbitrary presumptions violate due process,³ and a statute may not provide that proof of one fact shall constitute even prima facie evidence of another fact that it has no reasonable tendency to establish.⁴

A legislature may provide that official certificates,⁵ records, or orders⁶ constitute prima facie evidence of the facts stated in them. However, statutes making written instruments conclusive evidence of facts stated,⁷ or making proof of certain facts conclusive evidence of other facts,⁸ generally violate due process by denying a hearing on the facts in issue. An apparent, but not real, exception to a rule precluding the making of proof of certain facts conclusive proof of other facts is that statements made by a

party in a written instrument, such as a warehouse receipt,⁹ may be made conclusive against the party making the statements, on the ground of estoppel. Thus, a medical consent law does not violate due process by creating a conclusive presumption of the validity of a written and signed consent if the statutory substantive elements of informed consent are satisfied.¹⁰ Due process does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.¹¹

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Footnotes

- 1 U.S.—*Atlantic Coast Line R. Co. v. Ford*, 287 U.S. 502, 53 S. Ct. 249, 77 L. Ed. 457 (1933); *James-Dickinson Farm Mortgage Co. v. Harry*, 273 U.S. 119, 47 S. Ct. 308, 71 L. Ed. 569 (1927); *Cockrill v. People of State of California*, 268 U.S. 258, 45 S. Ct. 490, 69 L. Ed. 944 (1925).
Ark.—*St. Louis-San Francisco Ry. Co. v. Cole*, 181 Ark. 780, 27 S.W.2d 992 (1930).
Colo.—*Gregg v. People*, 65 Colo. 390, 176 P. 483 (1918).
Fla.—*Seaboard Air Line Ry. Co. v. Watson*, 103 Fla. 477, 137 So. 719 (1931).
Ga.—*Reid v. Perkerson*, 207 Ga. 27, 60 S.E.2d 151 (1950).
Iowa—*Calkins v. Adams County Co-op. Elec. Co.*, 259 Iowa 245, 144 N.W.2d 124 (1966).
Mass.—*DiLoreto v. Fireman's Fund Ins. Co.*, 383 Mass. 243, 418 N.E.2d 612 (1981).
Mo.—*Kansas City v. Howe*, 416 S.W.2d 683 (Mo. Ct. App. 1967).
N.J.—*Mazza v. Cavicchia*, 15 N.J. 498, 105 A.2d 545 (1954).
Wash.—*Ware v. Phillips*, 77 Wash. 2d 879, 468 P.2d 444 (1970).
- 2 U.S.—*Leary v. U.S.*, 395 U.S. 6, 89 S. Ct. 1532, 23 L. Ed. 2d 57 (1969), judgment aff'd, 544 F.2d 1266 (5th Cir. 1977).
Colo.—*Pizza v. Wolf Creek Ski Development Corp.*, 711 P.2d 671, 55 A.L.R.4th 607 (Colo. 1985).
Ga.—*Cobb County School Dist. v. Barker*, 271 Ga. 35, 518 S.E.2d 126 (1999).
Ky.—*Kentucky Harlan Coal Co. v. Holmes*, 872 S.W.2d 446 (Ky. 1994).
Or.—*Wyckoff v. Mutual Life Ins. Co. of New York*, 173 Or. 592, 147 P.2d 227 (1944).
Va.—*Fairfax County Fire and Rescue Services v. Newman*, 222 Va. 535, 281 S.E.2d 897 (1981).
Wash.—*Miller v. Paul Revere Life Ins. Co.*, 81 Wash. 2d 302, 501 P.2d 1063 (1972).
- 3 U.S.—*Bandini Petroleum Co. v. Superior Court of State of Cal. in and for Los Angeles County*, 284 U.S. 8, 52 S. Ct. 103, 76 L. Ed. 136, 78 A.L.R. 826 (1931); *Western & A.R.R. v. Henderson*, 279 U.S. 639, 49 S. Ct. 445, 73 L. Ed. 884 (1929).
Iowa—*Hensler v. City of Davenport*, 790 N.W.2d 569, 74 A.L.R.6th 645 (Iowa 2010).
Ky.—*Kentucky Harlan Coal Co. v. Holmes*, 872 S.W.2d 446 (Ky. 1994).
Railroad's negligence
A statute raising a presumption of a railroad's negligence from the mere fact of a crossing collision violated due process.
U.S.—*Western & A.R.R. v. Henderson*, 279 U.S. 639, 49 S. Ct. 445, 73 L. Ed. 884 (1929).
Paternity
Due process required that an alleged father be given the opportunity to offer evidence that he was the natural father of a child despite a statutory presumption that the child was born of her mother's marriage.
Cal.—*In re Lisa R.*, 13 Cal. 3d 636, 119 Cal. Rptr. 475, 532 P.2d 123, 90 A.L.R.3d 1017 (1975).
- 4 U.S.—*McFarland v. American Sugar Refining Co.*, 241 U.S. 79, 36 S. Ct. 498, 60 L. Ed. 899 (1916).
- 5 U.S.—*U.S. for Use of Strona v. Bussey*, 51 F. Supp. 996 (S.D. Cal. 1943).
Ga.—*Georgia Fertilizer Co. v. Walker*, 171 Ga. 734, 156 S.E. 820 (1931).
- 6 U.S.—*Reitler v. Harris*, 223 U.S. 437, 32 S. Ct. 248, 56 L. Ed. 497 (1912).
Coroner's report of cause of death
Ohio—*Vargo v. Travelers Ins. Co., Inc.*, 34 Ohio St. 3d 27, 516 N.E.2d 226 (1987).
- 7 **Tax deed**
Cal.—*Sheeter v. Lifur*, 113 Cal. App. 2d 729, 249 P.2d 336 (2d Dist. 1952).
Official analysis of fertilizers
Ga.—*Southern Cotton Oil Co. v. Raines*, 171 Ga. 154, 155 S.E. 484 (1930).

- 8 Ill.—[Shellabarger Elevator Co. v. Illinois Cent. R. Co.](#), 278 Ill. 333, 116 N.E. 170 (1917).
As to the requirements of due process in connection with conclusive or irrebuttable presumptions, generally, see § 1877.
- Conclusive nonexistence of fact**
A statutory provision purporting to establish the conclusive existence or nonexistence of a fact susceptible of proof to the contrary would, if the contrary fact were material to the case, violate due process.
- R.I.—[Cataldo v. Admiral Inn, Inc.](#), 102 R.I. 1, 227 A.2d 199 (1967).
- 9 S.D.—[Street v. Farmers Elevator Co. of Elkton](#), 34 S.D. 523, 149 N.W. 429 (1914).
- 10 Fla.—[Parikh v. Cunningham](#), 493 So. 2d 999 (Fla. 1986).
- 11 [MacKay v. Drug Enforcement Admin.](#), 664 F.3d 808 (10th Cir. 2011).

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16D C.J.S. Constitutional Law § 1962

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

6. Evidence

§ 1962. Allocation of burden of proof

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4000 to 4006

Rules dealing with the burden of proof or of going forward are upheld if the right to present a defense is not arbitrarily denied.

If there is a rational relation to the facts deemed to constitute a prima facie case, and the defendant is given a fair opportunity to meet that case by evidence, legislation affecting the burden of going forward does not violate due process.¹ While statutes that affect the burden of proof have been upheld,² it is contrary to due process for a legislature to regulate the burden of proof so as to arbitrarily deprive a party of the right to interpose a valid defense.³ Congress may generally alter the traditional allocation of the burden of proof without infringing a litigant's due process rights except in criminal cases.⁴

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Footnotes

¹ Cal.—[People v. Pay Less Drug Store](#), 25 Cal. 2d 108, 153 P.2d 9 (1944).

- 2 U.S.—*U.S. v. Illinois Cent. R. Co.*, 291 U.S. 457, 54 S. Ct. 471, 78 L. Ed. 909 (1934); *James-Dickinson Farm Mortgage Co. v. Harry*, 273 U.S. 119, 47 S. Ct. 308, 71 L. Ed. 569 (1927).
Or.—*Sherris v. City of Portland*, 41 Or. App. 545, 599 P.2d 1188 (1979).
Trial de novo
A statute that entitled a party aggrieved by an order of a human relations commission to a trial de novo in court did not violate the claimant's right to due process by requiring that she carry the burden of proof and produce same quantum of evidence, which, at least theoretically, she offered at the previous commission hearing.
- 3 Del.—*Lindsay v. Beaver Brook Section One Inc.*, 322 A.2d 13 (Del. 1974).
Tex.—*Clem v. Evans*, 291 S.W. 871, 51 A.L.R. 1135 (Tex. Comm'n App. 1927).
- 4 U.S.—*U.S. v. One Parcel of Property Located at 194 Quaker Farms Road, Oxford, Conn.*, 85 F.3d 985 (2d Cir. 1996).

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16D C.J.S. Constitutional Law § 1963

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

6. Evidence

§ 1963. Standard and sufficiency of proof

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4000 to 4006

The standard of proof is an element of due process, and the selection of a standard depends on the risk of error on private interests, balanced against the government interest in the use of a particular standard.

The standard of proof is an element of the minimum procedural due process required in proceedings affecting protected liberty or property interests¹ because due process requires that a jury be instructed concerning the degree of confidence society requires when making findings in particular types of adjudications.² The standard of proof is a matter of due process and serves to allocate the risk of error between litigants and to indicate the relative importance attached to the ultimate decision.³ The determination of which standard qualifies as the minimum tolerated by the due process requirement in any given proceeding turns on a balancing of the private interests affected by the proceeding, the risk of error, and the countervailing governmental interest supporting the use of a particular standard.⁴

Whether the loss threatened by a particular type of proceeding is sufficiently grave to warrant more than average certainty turns on both the nature of the private interest threatened and the permanency of the threatened loss, as well as on how the risk of error should be distributed between the litigants.⁵ The clear and convincing standard is required as a matter of due process when the

threatened loss resulting from civil proceedings is comparable to the consequences of a criminal case, in the sense that it takes away liberty or permanently deprives individuals of interests that are clearly fundamental or significant to personal welfare⁶ and are more substantial than the loss of money.⁷ By contrast, individual interests not rising to the level of a fundamental right are not entitled to protection by a standard of proof greater than a fair preponderance of the evidence.⁸

The Supreme Court has never approved a case-by-case determination of the proper standard of proof for a given type of proceeding, and thus a statute providing for a preponderance of the evidence standard in proceedings to terminate parental rights is inconsistent with due process.⁹

A plaintiff does not have a due process right to have a case submitted to the jury on speculative evidence.¹⁰ Except in those instances recognized by statute where the reliability of hearsay is established, hearsay evidence alone is insufficient to satisfy the requirement of due process, and uncorroborated hearsay does not constitute substantial evidence.¹¹

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Footnotes

- 1 Mass.—[Spence v. Gormley](#), 387 Mass. 258, 439 N.E.2d 741 (1982).
- 2 U.S.—[Addington v. Texas](#), 441 U.S. 418, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979).
N.H.—[State v. Ploof](#), 162 N.H. 609, 34 A.3d 563 (2011).
- 3 Okla.—[Johnson v. Board of Governors of Registered Dentists of State of Okl.](#), 1996 OK 41, 913 P.2d 1339 (Okla. 1996), corrected, (May 2, 1996).
- 4 N.J.—[Matter of Polk](#), 90 N.J. 550, 449 A.2d 7 (1982).
Factors apply in litigation with government
Alaska—[DeNuptiis v. Unocal Corp.](#), 63 P.3d 272 (Alaska 2003).
Fundamental fairness required
When the government deprives an individual of a liberty or property interest, procedural due process requires that the standard of proof must satisfy the constitutional minimum of "fundamental fairness."
Cal.—[People v. Jason K.](#), 188 Cal. App. 4th 1545, 116 Cal. Rptr. 3d 443 (4th Dist. 2010).
- 5 U.S.—[Santosky v. Kramer](#), 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982).
Ariz.—[Kent K. v. Bobby M.](#), 210 Ariz. 279, 110 P.3d 1013 (2005).
- 6 N.J.—[Matter of Polk](#), 90 N.J. 550, 449 A.2d 7 (1982).
- 7 Fla.—[Pullen v. State](#), 802 So. 2d 1113 (Fla. 2001).
Ky.—[Woods v. Com.](#), 142 S.W.3d 24 (Ky. 2004).
Neb.—[Nebraska Legislature ex rel. State v. Hergert](#), 271 Neb. 976, 720 N.W.2d 372, 212 Ed. Law Rep. 434 (2006).
Interest in reputation
For due process purposes, the clear and convincing standard of proof is employed in civil cases involving allegations of fraud or some other quasi-criminal wrongdoing since the interest at stake is deemed to be more substantial than the mere loss of money, and the courts seek to reduce the risk to the defendant of having his or her reputation erroneously tarnished, by increasing the plaintiff's burden of proof.
Okla.—[Johnson v. Board of Governors of Registered Dentists of State of Okl.](#), 1996 OK 41, 913 P.2d 1339 (Okla. 1996), corrected, (May 2, 1996).
- 8 N.J.—[Matter of Polk](#), 90 N.J. 550, 449 A.2d 7 (1982).
Consumer fraud
The Due Process Clause does not require the higher "clear and convincing evidence" standard of proof in consumer fraud cases.
Minn.—[State by Humphrey v. Alpine Air Products, Inc.](#), 500 N.W.2d 788 (Minn. 1993).
Adverse possession
Adverse possession is not a "taking" in the constitutional sense, and applying the preponderance of the evidence standard, rather than the clear and convincing evidence standard, does not violate due process.

- 9 Colo.—*Gerner v. Sullivan*, 768 P.2d 701 (Colo. 1989).
U.S.—*Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982).
10 S.C.—*Gray v. Southern Facilities, Inc.*, 256 S.C. 558, 183 S.E.2d 438 (1971).
11 Cal.—*In re Lucero L.*, 22 Cal. 4th 1227, 96 Cal. Rptr. 2d 56, 998 P.2d 1019 (2000).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings


7. Hearing or Trial

a. Right or Opportunity to Be Heard

§ 1964. Due process right or opportunity to be heard, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3879 to 3888, 3912, 3953 to 3955, 3957 to 3960, 3988, 3989, 3992 to 3998, 4003, 4038, 4827

In a civil proceeding, a hearing or an opportunity to be heard is an essential element of due process.

In a civil proceeding, an essential element of due process is a hearing,¹ or at least an opportunity to be heard,² unless no amount of process would affect the outcome for the plaintiff.³ The opportunity to be heard is a fundamental requisite of due process.⁴ The benefit of a hearing or an opportunity to be heard is not merely a matter of grace, but is one of right,⁵ which is protected by the due process guarantees of the federal⁶ and state constitutions.⁷

A fundamental premise of due process is that a court cannot adjudicate any matter unless the parties have been given a reasonable opportunity to be heard on the issues.⁸ Due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.⁹ Due process does not require that the defendant in every civil case actually have a hearing

on the merits, but what is required is an opportunity for an appropriate hearing.¹⁰ Due process is accorded if a party is given sufficient notice of a trial, and the trial is held regardless of whether that party actually takes advantage of the opportunity to be heard.¹¹ Thus, a person who is afforded a full opportunity to be heard, but does not take advantage of it, is not deprived of any constitutional right by an adverse determination.¹²

The guarantee of hearing implied by due process applies to issues of fact,¹³ as well as to issues of law.¹⁴ The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Court did not violate husband's right to procedural due process when it proceeded with trial after he was disconnected from phone call by which he was participating in trial in divorce proceedings; husband had notice of the trial, failed to make any pre-trial motions for telephonic participation or a continuance before trial, and did not advise the court until the opening of trial that he would not be present, and counsel met in chambers acknowledging that husband was unavailable due to scheduling issues or a possible missed train yet he still wished to proceed with trial. [U.S. Const. Amend. 14. Riddle v. Riddle, 2018 ND 62, 907 N.W.2d 769 \(N.D. 2018\).](#)

The state due process protection against the arbitrary exercise of the powers of government has both procedural and substantive components: the procedural component provides that when a state seeks to deprive a person of a protected interest, the person must receive notice of the deprivation and an opportunity to be heard to guard against erroneous deprivation; meanwhile, the substantive component of due process protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures. [Wash. Const. art. 1, § 3. Yim v. City of Seattle, 451 P.3d 694 \(Wash. 2019\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[Edelberg v. Illinois Racing Bd., 540 F.2d 279 \(7th Cir. 1976\)](#); [Denton v. Mr. Swiss of Missouri, Inc., 564 F.2d 236, 24 Fed. R. Serv. 2d 431 \(8th Cir. 1977\)](#); [Ong v. Tovey, 552 F.2d 305 \(9th Cir. 1977\)](#); [Monroe Division, Litton Business Systems, Inc. v. De Bari, 562 F.2d 30 \(10th Cir. 1977\)](#); [Ngemi v. County of Nassau, 2015 WL 730047 \(E.D. N.Y. 2015\)](#).
Okla.—[McCathern v. City of Oklahoma City, 2004 OK 61, 95 P.3d 1090 \(Okla. 2004\)](#), as corrected, (July 13, 2004).
Grievous loss
The right to be heard before being condemned to suffer a grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a basic due process principle.
D.C.—[In re Asher, 772 A.2d 1161 \(D.C. 2001\)](#).
Fundamentally unjust deprivation
Under due process principles, a court must have a hearing if it would be fundamentally unjust to take away a citizen's valuable rights without an opportunity to be heard.
Miss.—[University Nursing Associates, PLLC v. Phillips, 842 So. 2d 1270, 176 Ed. Law Rep. 470 \(Miss. 2003\)](#).
2 U.S.—[Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 \(1965\)](#); [Davila-Torres v. Feliciano-Torres, 924 F. Supp. 2d 359 \(D.P.R. 2013\)](#).

- Cal.—*Salas v. Cortez*, 24 Cal. 3d 22, 154 Cal. Rptr. 529, 593 P.2d 226 (1979).
- Conn.—*Costello v. Costello*, 186 Conn. 773, 443 A.2d 1282 (1982).
- Iowa—*F.K. v. Iowa Dist. Court For Polk County*, 630 N.W.2d 801 (Iowa 2001), as amended on denial of reh'g, (July 27, 2001).
- Mo.—*Valter v. Orchard Farm School Dist.*, 541 S.W.2d 550 (Mo. 1976).
- N.H.—*In re Kosek*, 151 N.H. 722, 871 A.2d 1 (2005).
- Tex.—*Henley v. State*, 454 S.W.3d 106 (Tex. App. Fort Worth 2014), reh'g overruled, (Feb. 5, 2015).
- Wash.—*Pal v. Washington State Dept. of Social and Health Services*, 342 P.3d 1190 (Wash. Ct. App. Div. 2 2015).
- 3 D.C.—*Wall v. Babers*, 82 A.3d 794 (D.C. 2014).
- 4 U.S.—*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).
- 5 Mich.—*Hughes v. Almena Twp.*, 284 Mich. App. 50, 771 N.W.2d 453 (2009).
- Mo.—*Magerstadt v. La Forge*, 303 S.W.2d 130 (Mo. 1957).
- Pa.—*Piper Group, Inc. v. Bedminster Tp. Bd. of Sup'rs*, 992 A.2d 224 (Pa. Commw. Ct. 2010), aff'd, 612 Pa. 282, 30 A.3d 1083 (2011).
- 6 U.S.—*Shelley v. Kraemer*, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, 3 A.L.R.2d 441 (1948).
- 7 Mo.—*State ex rel. Perrine v. Keirnan*, 361 Mo. 871, 237 S.W.2d 156 (1950).
- 8 Conn.—*Perugini v. Giuliano*, 148 Conn. App. 861, 89 A.3d 358 (2014).
- 9 Wash.—*Didlake v. Washington State*, 345 P.3d 43 (Wash. Ct. App. Div. 1 2015).
- 10 U.S.—*Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971).
- 11 Mont.—*In re Marriage of Fishbaugh*, 2002 MT 175, 310 Mont. 519, 52 P.3d 395 (2002).
- 12 U.S.—*Satterfield v. Edenton-Chowan Bd. of Ed.*, 530 F.2d 567 (4th Cir. 1975).
- Colo.—*People v. Lindsey*, 80 Colo. 465, 253 P. 465 (1927).
- Ill.—*Lescher v. Barker*, 57 Ill. App. 3d 776, 15 Ill. Dec. 535, 373 N.E.2d 1007 (1st Dist. 1978).
- Wis.—*Riemer v. Riemer*, 85 Wis. 2d 375, 270 N.W.2d 93 (Ct. App. 1978).
- 13 U.S.—*American Broadcasting Co. v. F.C.C.*, 179 F.2d 437 (D.C. Cir. 1949); *Haft v. Clark*, 992 F. Supp. 2d 1063 (D. Nev. 2014).
- N.J.—*Callen v. Gill*, 7 N.J. 312, 81 A.2d 495 (1951).
- Va.—*Assaid v. City of Roanoke*, 179 Va. 47, 18 S.E.2d 287 (1942).
- Right to an evidentiary hearing, see § 1968.
- 14 U.S.—*American Broadcasting Co. v. F.C.C.*, 179 F.2d 437 (D.C. Cir. 1949).
- Va.—*Assaid v. City of Roanoke*, 179 Va. 47, 18 S.E.2d 287 (1942).
- 15 N.Y.—*County of Nassau v. Canavan*, 1 N.Y.3d 134, 770 N.Y.S.2d 277, 802 N.E.2d 616 (2003).

16D C.J.S. Constitutional Law § 1965

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings


7. Hearing or Trial

a. Right or Opportunity to Be Heard

§ 1965. Validity of legislation affecting right to hearing

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3879 to 3888, 3912, 3953, 3954, 3955, 3957 to 3960, 3988, 3989, 3992 to 3998, 4003, 4038, 4827

A statute is constitutional despite a failure to expressly provide for a hearing, if a requirement for a hearing may be fairly implied.

A statute is constitutional despite a failure to expressly provide for a hearing, if a requirement for a hearing may be fairly implied.¹ Thus, a statute does not violate due process if it may be reasonably interpreted in a manner that provides access to courts and an opportunity to be heard.²

A statutory provision is not rendered invalid on its face by the mere possibility its application may deprive a tenant of a proper hearing in specific situations.³ The right to be heard in open court is not satisfied by legislation that allows for pretrial investigations and the like.⁴

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Footnotes

- 1 Ga.—[Kirton v. Biggers](#), 232 Ga. 223, 206 S.E.2d 33 (1974).
- Ky.—[Foster v. Goodpaster](#), 290 Ky. 410, 161 S.W.2d 626, 140 A.L.R. 1044 (1942).
- 2 Fla.—[State ex rel. Pittman v. Stanjeski](#), 562 So. 2d 673 (Fla. 1990).
- 3 U.S.—[Lindsey v. Normet](#), 405 U.S. 56, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972).
- 4 Colo.—[Anderson v. Anderson](#), 167 Colo. 88, 445 P.2d 397 (1968).

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings


7. Hearing or Trial

a. Right or Opportunity to Be Heard

§ 1966. Initial hearing or rehearing

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

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Due process requires only one hearing and generally not a rehearing or new trial.

Due process does not guarantee more than one hearing relating to rights growing out of the same facts,¹ and one ample prejudgment hearing satisfies constitutional demands.² A motion for rehearing does not, however, amount to an opportunity to be heard in an orderly proceeding that is adapted to the nature and circumstances of the dispute as could satisfy a litigant's due process rights.³ It is ordinarily not essential to provide a rehearing or new trial,⁴ or an appeal,⁵ although a rehearing may be required to allow a litigant an opportunity to prove that the litigant tried to appear at a hearing but was legally barred from appearing, in violation of due process.⁶ Furthermore, a hearing on a motion for a new trial filed by one party is not required by due process,⁷ particularly if the rule governing new-trial motions does not require a hearing and the trial court was entitled to assume that the motion contained all relevant arguments.⁸ If a court considers an issue sua sponte, due process can be satisfied by affording a party an opportunity for rehearing.⁹

Requiring a defendant to show a meritorious defense as a condition of granting a new trial violates due process if the defendant had no actual or constructive notice of the trial date.¹⁰ Fairness and due process may require a new trial if a rule requiring additional proof was announced in another case during the time between the trial and appeal.¹¹ A juvenile may have a right of access to the courts to seek a new trial if new evidence suggests that the minor may have been unfairly accused of a crime.¹²

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Footnotes

- 1 U.S.—*Stuyvesant Ins. Co. v. District Director, Immigration and Naturalization Service*, U. S. Dept. of Justice, 407 F. Supp. 1200 (N.D. Ill. 1975); *Brown v. Lynn*, 385 F. Supp. 986 (N.D. Ill. 1974).
Ky.—*Black v. York*, 300 Ky. 166, 189 S.W.2d 599 (1945).
- 2 Conn.—*Brein v. Connecticut Eclectic Examining Board*, 103 Conn. 65, 130 A. 289 (1925).
Ill.—*People v. Ross*, 344 Ill. App. 407, 101 N.E.2d 112 (2d Dist. 1951).
Ohio—*Gallagher v. Harrison*, 86 Ohio App. 73, 40 Ohio Op. 494, 55 Ohio L. Abs. 97, 88 N.E.2d 589 (1st Dist. Hamilton County 1949).
Fair hearing
Neb.—*Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972).
- 3 Ill.—*Lamm v. McRaith*, 2012 IL App (1st) 112123, 366 Ill. Dec. 110, 979 N.E.2d 911 (App. Ct. 1st Dist. 2012) (trial court's remand order required a new administrative hearing on remand).
- 4 U.S.—*Tyler v. Vickery*, 517 F.2d 1089, 30 A.L.R. Fed. 907 (5th Cir. 1975).
Cal.—*Smith v. City and County of San Francisco*, 11 Cal. App. 3d 606, 89 Cal. Rptr. 878 (1st Dist. 1970).
Kan.—*Baker v. St. Louis Smelting & Refining Co.*, 145 Kan. 273, 65 P.2d 284, 109 A.L.R. 591 (1937).
Mich.—*Estate of Kasuba*, 401 Mich. 560, 258 N.W.2d 731 (1977).
Mo.—*Goodwin v. Missouri Pac. R. Co.*, 335 Mo. 398, 72 S.W.2d 988 (1934).
Not required in administrative proceedings
A rehearing is not essential to due process in administrative proceedings.
Tex.—*Melmat, Inc. v. Texas Alcoholic Beverage Com'n*, 362 S.W.3d 211 (Tex. App. Dallas 2012).
Opportunity to argue motion for rehearing
Fla.—*Carnell v. Carnell*, 398 So. 2d 503 (Fla. 5th DCA 1981).
- 5 § 1997.
- 6 Fla.—*Miranda v. Munoz-Ortiz*, 75 So. 3d 843 (Fla. 2d DCA 2011) (prisoner ordered back to dorm before hearing was conducted).
- 7 La.—*Sonnier v. Liberty Mut. Ins. Co.*, 258 La. 813, 248 So. 2d 299 (1971).
Wash.—*State ex rel. McCool v. Small Claims Court of Jefferson County Dist. Court of Port Townsend*, 12 Wash. App. 799, 532 P.2d 1191 (Div. 2 1975) (small claims court).
- 8 Fla.—*Aubourg v. Erazo*, 922 So. 2d 1106 (Fla. 4th DCA 2006).
- 9 Mich.—*Al-Maliki v. LaGrant*, 286 Mich. App. 483, 781 N.W.2d 853 (2009).
- 10 Tex.—*Lopez v. Lopez*, 757 S.W.2d 721 (Tex. 1988).
- 11 Wyo.—*Farmers Ins. Exchange v. Shirley*, 958 P.2d 1040 (Wyo. 1998).
- 12 U.S.—*Germany v. Vance*, 868 F.2d 9 (1st Cir. 1989).

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16D C.J.S. Constitutional Law § 1967

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings


7. Hearing or Trial

a. Right or Opportunity to Be Heard

§ 1967. Stage of proceedings

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To comply with due process, a hearing must be given at some time, although not every ruling is subject to a hearing, and a postdeprivation hearing may be permissible under some circumstances.

The right to be heard is subject to reasonable regulation¹ and does not extend to every step or ruling during a trial.² Although it is not necessary that a hearing be had at any particular stage of the proceedings,³ it is necessary that a hearing be given at some point.⁴

The stage of the proceedings at which the hearing occurs may be left to legislative discretion,⁵ but it must be conducted in time to be effective.⁶ The timing of a hearing, if it is to be effective, will depend on an appropriate accommodation of the competing interests, including the importance of the private interest and the length or finality of the deprivation, and the magnitude of

the governmental interest involved.⁷ Generally, to satisfy procedural due process when only property rights are concerned, it is sufficient that there is at some stage an opportunity for a hearing and a judicial determination.⁸

Under some circumstances, a postdeprivation hearing may be adequate,⁹ such as a hearing within 30 days after an automobile was towed,¹⁰ or 90 days after the F.D.I.C. removed a bank officer.¹¹ There also may be circumstances under which a hearing before judgment is not requisite, as when rights are preserved for appeal,¹² or if due process was not denied because a hearing was provided on a motion for a new trial.¹³

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Footnotes

- 1 Cal.—*Moore v. California Minerals Products Corp.*, 115 Cal. App. 2d 834, 252 P.2d 1005 (2d Dist. 1953).
- 2 Cal.—*Moore v. California Minerals Products Corp.*, 115 Cal. App. 2d 834, 252 P.2d 1005 (2d Dist. 1953).
La.—*Sonnier v. Liberty Mut. Ins. Co.*, 258 La. 813, 248 So. 2d 299 (1971).
- 3 U.S.—*Greenspan v. Klein*, 442 F. Supp. 860 (D.N.J. 1977).
Haw.—*State v. Guidry*, 105 Haw. 222, 96 P.3d 242 (2004).
- 4 Cal.—*Kash Enterprises, Inc. v. City of Los Angeles*, 19 Cal. 3d 294, 138 Cal. Rptr. 53, 562 P.2d 1302 (1977).
Neb.—*Miller v. Miller*, 153 Neb. 890, 46 N.W.2d 618 (1951).
Wash.—*Reilly v. State*, 18 Wash. App. 245, 566 P.2d 1283 (Div. 3 1977).
- 5 S.C.—*Shealey v. Seaboard Air Line Ry. Co.*, 131 S.C. 144, 126 S.E. 622 (1924).
- 6 Iowa—*Continental & Commercial Trust & Savings Bank v. Muscatine, B. & S.R. Co.*, 202 Iowa 579, 210 N.W. 787, 50 A.L.R. 139 (1926).
- 7 U.S.—*Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982).
- 8 U.S.—*San Geronimo Caribe Project, Inc. v. Acevedo-Vila*, 687 F.3d 465, 89 A.L.R.6th 725 (1st Cir. 2012), cert. denied, 133 S. Ct. 1580, 185 L. Ed. 2d 576 (2013); *Watrous v. Town of Preston*, 902 F. Supp. 2d 243 (D. Conn. 2012).
- 9 U.S.—*Mohomed v. Vician*, 490 F. Supp. 954, 54 A.L.R. Fed. 924 (S.D. N.Y. 1980).
D.C.—*Richard Milburn Public Charter Alternative High School v. Cafritz*, 798 A.2d 531, 165 Ed. Law Rep. 643 (D.C. 2002).
Mont.—*Montana Media, Inc. v. Flathead County*, 2003 MT 23, 314 Mont. 121, 63 P.3d 1129 (2003).
Wash.—*Reilly v. State*, 18 Wash. App. 245, 566 P.2d 1283 (Div. 3 1977).
Postseizure hearing
A tenant's due process rights were satisfied by two hearings held within two days of the issuance of a distress writ, the judge stating that the tenant could have a full evidentiary hearing on a motion to dissolve the writ at any time.
Fla.—*Goodman v. Brasserie La Capannina, Inc.*, 602 So. 2d 1245 (Fla. 1992).
- 10 U.S.—*City of Los Angeles v. David*, 538 U.S. 715, 123 S. Ct. 1895, 155 L. Ed. 2d 946 (2003).
- 11 U.S.—*Federal Deposit Ins. Corp. v. Mallen*, 486 U.S. 230, 108 S. Ct. 1780, 100 L. Ed. 2d 265 (1988).
- 12 U.S.—*Consolidated Edison Co. of New York v. N.L.R.B.*, 305 U.S. 197, 59 S. Ct. 206, 83 L. Ed. 126 (1938); *American Surety Co. v. Baldwin*, 287 U.S. 156, 53 S. Ct. 98, 77 L. Ed. 231, 86 A.L.R. 298 (1932).
N.Y.—*In re Braier's Estate*, 305 N.Y. 148, 111 N.E.2d 424 (1953).
- 13 Kan.—*G & S Inv. Co., Inc. v. Close*, 240 Kan. 48, 726 P.2d 1317 (1986).
Wyo.—*Beavis ex rel. Beavis v. Campbell County Memorial Hosp.*, 2001 WY 32, 20 P.3d 508 (Wyo. 2001).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

7. Hearing or Trial

a. Right or Opportunity to Be Heard

§ 1968. Right to evidentiary hearing

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West's Key Number Digest

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Due process requires an evidentiary hearing only if there is a factual dispute.

Due process does not require a formal evidentiary hearing in all cases.¹ The constitutional right to an evidentiary hearing is implicated if there are material facts in dispute,² and persons who assert a due process right to a hearing must show that the facts they seek to establish in that hearing are relevant.³ When issues of fact are necessary to the determination of a court's jurisdiction, due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses.⁴

A hearing is not required if there is no factual issue to resolve⁵ but only questions of law.⁶ On the other hand, due process does mandate a trial-type evidentiary hearing when so-called "adjudicative facts" are in dispute.⁷

Footnotes

- 1 U.S.—U.S. v. Wood, Wire and Metal Lathers Intern. Union, Local Union No. 46, 471 F.2d 408 (2d Cir. 1973); Meridian Homes Corp. v. Nicholas W. Prassas & Co., 683 F.2d 201, 34 Fed. R. Serv. 2d 495, 73 A.L.R. Fed. 439 (7th Cir. 1982).
D.C.—Richard Milburn Public Charter Alternative High School v. Cafritz, 798 A.2d 531, 165 Ed. Law Rep. 643 (D.C. 2002).
- 2 Pa.—Chester Water Authority v. Pennsylvania Public Utility Com'n, 581 Pa. 640, 868 A.2d 384 (2005).
Mental competency hearing required
The due process right to a fair trial is violated by a trial court's failure to hold a proper competency hearing when there is substantial evidence that a defendant is incompetent.
U.S.—Filiaggi v. Bagley, 445 F.3d 851, 2006 FED App. 0132P (6th Cir. 2006).
- 3 U.S.—Connecticut Dept. of Public Safety v. Doe, 538 U.S. 1, 123 S. Ct. 1160, 155 L. Ed. 2d 98 (2003).
- 4 Conn.—State v. Casiano, 122 Conn. App. 61, 998 A.2d 792 (2010).
- 5 U.S.—Swift v. Ciccone, 472 F.2d 577 (8th Cir. 1972).
- 6 U.S.—N. L. R. B. v. Sun Drug Co., 359 F.2d 408 (3d Cir. 1966).
Summary judgment, see § 1983.
- 7 U.S.—Northeast Emergency Medical Associates, P. C. v. Califano, 470 F. Supp. 1111 (E.D. Pa. 1979).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

7. Hearing or Trial

b. Procedural Requisites

§ 1969. Procedural requisites for due process, generally

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Due process requires an orderly proceeding adapted to the nature of the case, and it does not always require an adversarial hearing, a full evidentiary hearing, or a formal hearing.

Although a defendant is entitled to due process at hearings created by statute, that does not mean that a party is entitled to the full panoply of rights available at a criminal trial whenever a statute creates a right to a hearing.¹ Instead, due process requires an orderly proceeding adapted to the nature of the case,² in which a citizen has a right to be heard and to defend one's rights,³ which includes the opportunity to present any available defenses.⁴ Due process does not always require an adversarial hearing, a full evidentiary hearing, or a formal hearing.⁵ Although there must be an opportunity for a hearing appropriate to the nature of the case,⁶ and the hearing must measure up to the standards of due process,⁷ no fixed procedure is requisite to meeting this goal.⁸ The sufficiency of the opportunity to be heard is flexible and requires only the procedural protections that the particular situation demands.⁹ The nature of the required hearing depends on an appropriate accommodation of the competing

interests involved,¹⁰ including the importance of the private interest and the length or finality of its deprivation, the likelihood of government error, and the magnitude of governmental interests involved.¹¹ Ordinarily, to work a permanent or prolonged loss of a constitutional liberty or property interest, an adjudicatory hearing, including a right to offer and test evidence if facts are in dispute, is required.¹²

The nature of a hearing to be conducted in accordance with the requirements of due process is shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases, not the rare exceptions.¹³ Although the formality and procedural requisites for a hearing may vary, depending upon the circumstances of the case,¹⁴ and must be tailored to those circumstances,¹⁵ the fundamental requirement of procedural due process is that an individual must be given an appropriate opportunity to be heard at a meaningful time and in a meaningful manner,¹⁶ which requires that the contents of the notice are neither ambiguous nor obscure but clearly inform the person of the nature of the charge.¹⁷

CUMULATIVE SUPPLEMENT

Cases:

Factors useful in deciding what specific safeguards the Constitution's Due Process Clause requires in order to make a civil proceeding fundamentally fair include (1) the nature of the private interest that will be affected, (2) the comparative risk of an erroneous deprivation of that interest with and without additional or substitute procedural safeguards, and (3) the nature and magnitude of any countervailing interest in not providing additional or substitute procedural requirements. [U.S.C.A. Const.Amend. 14](#). [Turner v. Rogers](#), 564 U.S. 431, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).

Under the Fourteenth Amendment, the type of hearing necessary, the process due, is a function of the context of the individual case, and due process is not a technical conception with a fixed content unrelated to time, place, and circumstances; instead, due process is flexible and calls for such procedural protections as the particular situation demands. [U.S.C.A. Const.Amend. 14](#). [Jones v. Louisiana Bd. of Sup'rs of University of Louisiana Systems](#), 809 F.3d 231 (5th Cir. 2015).

Procedural due process generally requires formal written notice of charges; sufficient opportunity to prepare to rebut charges; opportunity to have retained counsel at any hearings on charges, to confront his accusers, and to present evidence on his own behalf; unbiased hearing tribunal; and adequate record of proceedings. [U.S. Const. Amend. 14](#); [Const. art. 3, § 10](#). [Frazier v. McCabe](#), 851 S.E.2d 100 (W. Va. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Wis.—State v. O'Brien](#), 2014 WI 54, 354 Wis. 2d 753, 850 N.W.2d 8 (2014), cert. denied, 135 S. Ct. 494, 190 L. Ed. 2d 362 (2014).
- 2 [U.S.—Mathews v. Eldridge](#), 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); [Goldberg v. Kelly](#), 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970).
- 3 [U.S.—Mathews v. Eldridge](#), 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); [Goldberg v. Kelly](#), 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970).
- 4 [U.S.—Philip Morris USA Inc. v. Scott](#), 131 S. Ct. 1, 177 L. Ed. 2d 1040 (2010) (per Justice Scalia, sitting as circuit justice); [Lindsey v. Normet](#), 405 U.S. 56, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972).
- 5 [U.S.—Buckingham v. Secretary of U.S. Dept. of Agr.](#), 603 F.3d 1073 (9th Cir. 2010).

- 6 U.S.—*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).
Mass.—*Com. v. Lester L.*, 445 Mass. 250, 835 N.E.2d 244 (2005).
- 7 U.S.—*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).
- 8 U.S.—*Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971).
Rule under due process and open-courts provisions
Due process assures to every person a day in court and requires some legal procedure providing an opportunity to defend, and the open-courts provision in a state constitution makes similar assurances although litigants are not assured any particular process.
Ohio—*Johns v. Univ. of Cincinnati Med. Assoc., Inc.*, 101 Ohio St. 3d 234, 2004-Ohio-824, 804 N.E.2d 19 (2004).
- 9 U.S.—*Echavarria v. Pitts*, 641 F.3d 92 (5th Cir. 2011), as revised, (June 21, 2011).
S.D.—*In re L.N.*, 2004 SD 126, 689 N.W.2d 893 (S.D. 2004).
- 10 U.S.—*City of Los Angeles v. David*, 538 U.S. 715, 123 S. Ct. 1895, 155 L. Ed. 2d 946 (2003); *Monseratte v. New York State Senate*, 599 F.3d 148 (2d Cir. 2010).
- 11 U.S.—*City of Los Angeles v. David*, 538 U.S. 715, 123 S. Ct. 1895, 155 L. Ed. 2d 946 (2003); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982).
- 12 U.S.—*U.S. v. Rehlander*, 666 F.3d 45 (1st Cir. 2012).
- 13 U.S.—*Califano v. Yamasaki*, 442 U.S. 682, 99 S. Ct. 2545, 61 L. Ed. 2d 176, 27 Fed. R. Serv. 2d 941 (1979).
- 14 S.D.—*City of Pierre v. Blackwell*, 2001 SD 127, 635 N.W.2d 581 (S.D. 2001).
Testimony of children in domestic violence case
N.H.—*In re Morrill*, 147 N.H. 116, 784 A.2d 690 (2001).
- 15 N.H.—*In re Morrill*, 147 N.H. 116, 784 A.2d 690 (2001).
Wis.—*Milwaukee Dist. Council 48 v. Milwaukee County*, 2001 WI 65, 244 Wis. 2d 333, 627 N.W.2d 866 (2001).
- 16 U.S.—*City of Los Angeles v. David*, 538 U.S. 715, 123 S. Ct. 1895, 155 L. Ed. 2d 946 (2003); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982); *McDonald v. Wise*, 769 F.3d 1202 (10th Cir. 2014); *Jucha v. City of North Chicago*, 2014 WL 4696667 (N.D. Ill. 2014); *AmBuild Company, LLC v. United States*, 119 Fed. Cl. 10 (2014).
Ark.—*Smith v. State*, 2015 Ark. 23, 454 S.W.3d 219 (2015).
Cal.—*Litwin v. iRenew Bio Energy Solutions, LLC*, 226 Cal. App. 4th 877, 172 Cal. Rptr. 3d 328 (2d Dist. 2014), as modified, (May 29, 2014).
D.C.—*Price v. Independence Federal Savings Bank*, 110 A.3d 567 (D.C. 2015).
Ind.—*Indiana Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306 (Ind. Ct. App. 2015).
Tex.—*Cohen v. Sandcastle Homes, Inc.*, 2015 WL 832057 (Tex. App. Houston 1st Dist. 2015).
Stage of the proceeding when a hearing is required, see § 1967.
- 17 Tenn.—*State v. Burgins*, 2015 WL 1569236 (Tenn. 2015).

16D C.J.S. Constitutional Law § 1970

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

7. Hearing or Trial

b. Procedural Requisites

§ 1970. Full and fair hearing

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West's Key Number Digest, [Constitutional Law](#)  3879 to 3888, 3912, 3953, 3955, 3988, 3989, 3992 to 3998, 4003, 4038

Due process requires a full and fair hearing before a fair tribunal although a hearing before a judge or jury is not necessarily required.

A fair trial in a fair tribunal is a basic requirement of constitutional due process,¹ and the fact that the court's judgment may be justified on the merits does not obviate the requirement of a fair trial as essential to due process.² The opportunity of a party to defend must not be merely colorable or illusory³ or a sham.⁴ The hearing must be fair and full,⁵ including the right of each party to know the opponent's claims⁶ and be apprised of all evidence supporting the factual adjudications.⁷ Due process does not necessarily require a hearing before a court or before a jury,⁸ and an opportunity for a hearing before a competent and impartial tribunal upon proper notice may satisfy due process.⁹

CUMULATIVE SUPPLEMENT

Cases:

The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant. [U.S.C.A. Const.Amend. 14. Goodyear Dunlop Tires Operations, S.A. v. Brown](#), 564 U.S. 915, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011).

[END OF SUPPLEMENT]

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Footnotes

- 1

U.S.—[Caperton v. A.T. Massey Coal Co., Inc.](#), 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).
 Haw.—[Kawamata Farms, Inc. v. United Agri Products](#), 86 Haw. 214, 948 P.2d 1055, 35 U.C.C. Rep. Serv. 2d 1132 (1997), as amended, (Jan. 13, 2004).
 Idaho—[State v. Longest](#), 149 Idaho 782, 241 P.3d 955 (2010).
 Iowa—[State v. Gardner](#), 661 N.W.2d 116 (Iowa 2003).
 Okla.—[Clark v. Board of Educ. of Independent School District No. 89 of Oklahoma County](#), 2001 OK 56, 32 P.3d 851, 157 Ed. Law Rep. 911 (Okla. 2001).
 Tex.—[Golden Eagle Archery, Inc. v. Jackson](#), 24 S.W.3d 362 (Tex. 2000).
 Utah—[In re Worthen](#), 926 P.2d 853 (Utah 1996).
Risk of denial of justice
 A person is denied due process or a fair hearing if the defects in the hearing process might lead to a denial of justice.
 N.D.—[Stutsman County v. Westereng](#), 2001 ND 114, 628 N.W.2d 305 (N.D. 2001).
 Impartiality of the tribunal, see § 1981.
- 2

U.S.—[Inland Steel Co. v. N.L.R.B.](#), 109 F.2d 9 (C.C.A. 7th Cir. 1940).
- 3

Ala.—[Nichols v. Nichols](#), 46 Ala. App. 67, 238 So. 2d 186 (Civ. App. 1970).
 Fla.—[Department of Revenue ex rel. Poynter v. Bunnell](#), 51 So. 3d 543 (Fla. 1st DCA 2010).
- 4

U.S.—[Palko v. State of Connecticut](#), 302 U.S. 319, 58 S. Ct. 149, 82 L. Ed. 288 (1937) (overruled on other grounds by, [Benton v. Maryland](#), 395 U.S. 784, 89 S. Ct. 2056, 23 L. Ed. 2d 707 (1969)).
- 5

U.S.—[Kwong Hai Chew v. Colding](#), 344 U.S. 590, 73 S. Ct. 472, 97 L. Ed. 576 (1953); [Railroad Commission of California v. Pacific Gas & Electric Co.](#), 302 U.S. 388, 58 S. Ct. 334, 82 L. Ed. 319 (1938); [Abulashvili v. Attorney General of U.S.](#), 663 F.3d 197 (3d Cir. 2011); [Sierra Club v. Two Elk Generation Partners, Ltd. Partnership](#), 646 F.3d 1258 (10th Cir. 2011); [Alroy v. City of New York Law Dept.](#), 2014 WL 6632982 (S.D. N.Y. 2014).
 Ala.—[Opinion of the Justices](#), 345 So. 2d 1354 (Ala. 1977).
 Fla.—[Trans Health Management Inc. v. Nunziata](#), 159 So. 3d 850 (Fla. 2d DCA 2014).
 Ill.—[Central Illinois Public Service Co. v. Allianz Underwriters Ins. Co.](#), 158 Ill. 2d 218, 198 Ill. Dec. 834, 633 N.E.2d 675 (1994).
 Mich.—[Kar v. Hogan](#), 399 Mich. 529, 251 N.W.2d 77 (1976).
 N.M.—[Corliss v. Corliss](#), 1976-NMSC-023, 89 N.M. 235, 549 P.2d 1070 (1976).
 N.D.—[First Am. Bank & Trust Co. v. Ellwein](#), 221 N.W.2d 509 (N.D. 1974).
 Wash.—[State v. Malone](#), 9 Wash. App. 122, 511 P.2d 67 (Div. 2 1973).
- 6

U.S.—[Gonzales v. U.S.](#), 348 U.S. 407, 75 S. Ct. 409, 99 L. Ed. 467 (1955).
- 7

N.C.—[In re Gupton](#), 238 N.C. 303, 77 S.E.2d 716 (1953).
 The right to be informed of the opponent's evidence, generally, see § 1980.
- 8

Cal.—[Irvine v. Citrus Pest Dist. No. 2 of San Bernardino County](#), 62 Cal. App. 2d 378, 144 P.2d 857 (4th Dist. 1944).

Idaho—[Chambers v. McCollum](#), 47 Idaho 74, 272 P. 707 (1928).

Ind.—[Town of Walkerton v. New York, C. & St. L. R. Co.](#), 215 Ind. 206, 18 N.E.2d 799 (1939).

Mo.—[State ex rel. Hurwitz v. North](#), 304 Mo. 607, 264 S.W. 678 (1924), [aff'd](#), 271 U.S. 40, 46 S. Ct. 384, 70 L. Ed. 818 (1926).

Referral to hearing officer

Due process was not denied by a trial court's delegation of authority to an administrative hearing officer to hear child support modification motions, without providing for a trial de novo by the court, as the parties received notice, a reasonable hearing, and judicial review.

Kan.—[Matter of Marriage of Soden](#), 251 Kan. 225, 834 P.2d 358 (1992).

Referee appointed with parties' consent

Conn.—[Seal Audio, Inc. v. Bozak, Inc.](#), 199 Conn. 496, 508 A.2d 415 (1986).

Whether there is a due process right to a jury trial, see § 1972.

Whether the judge must personally hear the evidence, see § 1980.

Ala.—[State v. Smith](#), 23 So. 3d 1172 (Ala. Crim. App. 2009).

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16D C.J.S. Constitutional Law § 1971

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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§ 1971. Discovery and sanctions

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3988, 3989, 3992 to 3998, 4003

Due process requirements apply to discovery rules, including the imposition of sanctions for their violation.

Due process requirements apply to discovery in civil cases,¹ and discovery rules have generally been established to ensure due process.² Due process requires that the plaintiffs be given an adequate opportunity to conduct discovery on and brief issues related to the defendant's affirmative defenses.³

The authority of a court to impose a sanction for failure to comply with a discovery demand is limited by considerations of due process.⁴ Procedural due process considerations require that case-concluding discovery sanctions be just and that they relate to the claims at issue in the violated discovery order.⁵ In accordance with the rule that a court may strike a pleading or dismiss an action if there is a close nexus between the party's misconduct in suppressing information relevant to the opponent's defense and the merits of the case,⁶ due process is not denied by striking a pleading for a party's failure to produce certain material

possessed by the party,⁷ or a failure to answer questions or produce documents that are pertinent to the issues of fact.⁸ Due process is denied only if the dismissal is more drastic than reasonably necessary.⁹

Since a sanction of dismissal with prejudice due to abusive litigation practices during discovery is a harsh remedy, due process requires that the violation be predicated upon willfulness, bad faith, or some fault of the petitioner rather than inability to comply.¹⁰ Thus, dismissal of an action because of a genuine inability to comply with a pretrial production order raises due process issues,¹¹ and an action may not be dismissed for a failure to comply with a discovery request that is due to circumstances beyond the party's control.¹²

Default judgment as sanction.

The entry of a default judgment for failure to comply with discovery orders does not offend due process,¹³ so long as the judgment is entered to compel discovery and not merely to punish,¹⁴ and the noncompliance with discovery procedures is due to willfulness or bad faith.¹⁵

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Footnotes

- 1 U.S.—*Dowling v. Isthmian S. S. Corp.*, 184 F.2d 758 (3d Cir. 1950).
Tex.—*In re Estate of Perez-Muzza*, 446 S.W.3d 415 (Tex. App. San Antonio 2014), review denied, (Mar. 13, 2015).
- 2 La.—*State, Dept. of Transp. and Development v. Stumpf*, 458 So. 2d 448 (La. 1984).
- 3 Cal.—*Hendershot v. Ready to Roll Transportation, Inc.*, 228 Cal. App. 4th 1213, 175 Cal. Rptr. 3d 917 (2d Dist. 2014).
- 4 U.S.—*English v. 21st Phoenix Corp.*, 590 F.2d 723, 26 Fed. R. Serv. 2d 1037 (8th Cir. 1979); U.S. v. *Sumitomo Marine & Fire Ins. Co., Ltd.*, 617 F.2d 1365, 29 Fed. R. Serv. 2d 863 (9th Cir. 1980); J. M. *Cleminshaw Co. v. City of Norwich*, 93 F.R.D. 338, 33 Fed. R. Serv. 2d 554 (D. Conn. 1981).
Tex.—*In re Estate of Perez-Muzza*, 446 S.W.3d 415 (Tex. App. San Antonio 2014), review denied, (Mar. 13, 2015).
- 5 Nev.—*Blanco v. Blanco*, 311 P.3d 1170, 129 Nev. Adv. Op. No. 77 (Nev. 2013).
- 6 § 1957.
- 7 U.S.—*Hammond Packing Co. v. State of Ark.*, 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530 (1909).
Cal.—*Hillman v. Stults*, 263 Cal. App. 2d 848, 70 Cal. Rptr. 295 (2d Dist. 1968).
- 8 Kan.—*Edmonds v. Federal Securities Co.*, 131 Kan. 11, 290 P. 3 (1930).
- 9 U.S.—*G-K Properties v. Redevelopment Agency of City of San Jose*, 577 F.2d 645, 25 Fed. R. Serv. 2d 1497 (9th Cir. 1978).
Dismissal after warnings
Wis.—*Trispel v. Haefer*, 89 Wis. 2d 725, 279 N.W.2d 242 (1979).
Dismissal after hearing
U.S.—*DiGregorio v. First Rediscount Corp.*, 506 F.2d 781 (3d Cir. 1974).
- 10 U.S.—*Garcia v. Berkshire Life Ins. Co. Of America*, 569 F.3d 1174 (10th Cir. 2009).
- 11 Vt.—*John v. Medical Center Hospital of Vermont, Inc.*, 136 Vt. 517, 394 A.2d 1134 (1978).
- 12 U.S.—*Sigliano v. Mendoza*, 642 F.2d 309, 31 Fed. R. Serv. 2d 803 (9th Cir. 1981); U.S. v. *Sumitomo Marine & Fire Ins. Co., Ltd.*, 617 F.2d 1365, 29 Fed. R. Serv. 2d 863 (9th Cir. 1980).
- 13 U.S.—*Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971).
Kan.—*Wenger v. Wenger*, 239 Kan. 56, 716 P.2d 550 (1986).
Or.—*Harris v. Harris*, 247 Or. 479, 430 P.2d 993 (1967).

Wash.—*Associated Mtg. Invest. v. G.P. Kent Const. Co., Inc.*, 15 Wash. App. 223, 548 P.2d 558 (Div. 2 1976).

Rationale

The rationale for allowing a default judgment is that there a presumption, from the defendant's failure to produce information necessary to decide the case, that there is no merit in an asserted defense.

Haw.—*Ramil v. Keller*, 68 Haw. 608, 726 P.2d 254 (1986).

Mo.—*In re Marriage of Dickey*, 553 S.W.2d 538 (Mo. Ct. App. 1977).

Repeated refusal to appear for deposition

Mo.—*Kingsley v. Kingsley*, 716 S.W.2d 257 (Mo. 1986).

14 U.S.—*Phoceene Sous-Marine, S. A. v. U.S. Phosmarine, Inc.*, 682 F.2d 802, 34 Fed. R. Serv. 2d 951 (9th Cir. 1982).

Kan.—*Fields v. Stauffer Publications, Inc.*, 2 Kan. App. 2d 323, 578 P.2d 1138 (1978).

15 U.S.—*Baker v. Limber*, 647 F.2d 912, 31 Fed. R. Serv. 2d 1000 (9th Cir. 1981).

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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§ 1972. Jury trial

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3857, 3990

A jury trial is not indispensable to due process in a civil proceeding.

Trial by jury is not indispensable to due process¹ merely because property or personal rights are involved.² Just as the Due Process Clause of the Fifth Amendment does not require a jury trial in a federal court,³ the Due Process Clause of the Fourteenth Amendment does not require a jury trial in a state court,⁴ and the Seventh Amendment has not been incorporated by the Due Process Clause of the Fourteenth Amendment.⁵ Thus, in civil cases, each state is left to apply its own constitutional provision regarding the right to trial by jury.⁶ On the other hand, since the right to a trial by jury in criminal cases is fundamental to American justice, the Due Process Clause of the Fourteenth Amendment requires that states afford a trial by jury whenever the Sixth Amendment would require it if the case were in federal court.⁷ Furthermore, a state may not, consonant with due process, deny, on the sole ground of indigency, the right to a trial by jury in common law actions if a state constitution treats this as an

essential component of a meaningful opportunity to be heard for all civil litigants⁸ or fundamental rights are at stake.⁹ A litigant who voluntarily foregoes the right to a jury trial may not claim a due process violation.¹⁰

The parties are entitled, as a matter of due process, to have each properly supported claim submitted to the jury with a correct statement of the applicable law.¹¹ As a general rule, due process does not forbid the submission of complicated facts to a jury¹² though it does require that jurors resolve disputes based on legally fixed standards.¹³ Off the record comments by the judge to the jury, in counsel's absence, may imperil due process.¹⁴ Due process is not violated, however, by rules prohibiting juror testimony that either concerns deliberations¹⁵ or impeaches the jury's verdict.¹⁶

The due process requirement that a trial judge conduct meaningful and adequate review of a jury award is not violated by a hearing that results in a remittitur.¹⁷ The remedies available to a court when reducing a jury award based upon due process concerns are not necessarily the same as those available when a court exercises its discretion because it believes the amount of the award is inconsistent with the evidence in a case.¹⁸ The latter is conditional, and the court must offer a new trial as an alternative to reducing the award in order to avoid depriving the plaintiff of the Seventh Amendment right to a jury trial.¹⁹

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Footnotes

- 1 U.S.—*Hardware Dealers' Mut. Fire Ins. Co. of Wis. v. Glidden Co.*, 284 U.S. 151, 52 S. Ct. 69, 76 L. Ed. 214 (1931); *Southern Ry. Co. v. City of Durham, N.C.*, 266 U.S. 178, 45 S. Ct. 51, 69 L. Ed. 231 (1924); *Frazier v. Wells Fargo Bank, N.A.*, 541 Fed. Appx. 419 (5th Cir. 2013) (unpublished opinion).
- 2 N.C.—*In re Northwestern Bonding Co., Inc.*, 16 N.C. App. 272, 192 S.E.2d 33 (1972).
Okla.—*Vogel v. Corporation Commission of Oklahoma*, 1942 OK 14, 190 Okla. 156, 121 P.2d 586 (1942).
The right to a trial by jury under the federal and state constitutions, generally, see C.J.S., *Juries* §§ 4 et seq.
- 3 Ala.—*U-Haul Co. of Alabama v. State*, 294 Ala. 330, 316 So. 2d 685 (1975).
- 4 U.S.—*Wagner Electric Mfg. Co. v. Lyndon*, 262 U.S. 226, 43 S. Ct. 589, 67 L. Ed. 961 (1923); *Hawkins v. Bleakly*, 243 U.S. 210, 37 S. Ct. 255, 61 L. Ed. 678 (1917).
La.—*Brewton v. Underwriters Ins. Co.*, 848 So. 2d 586 (La. 2003).
- 5 Ark.—*Colclasure v. Kansas City Life Ins. Co.*, 290 Ark. 585, 720 S.W.2d 916 (1986).
Ky.—*Steelvest, Inc. v. Scansteel Service Center, Inc.*, 908 S.W.2d 104 (Ky. 1995).
Or.—*Parrott v. Carr Chevrolet, Inc.*, 331 Or. 537, 17 P.3d 473 (2001).
- 6 Kan.—*First Nat. Bank of Olathe v. Clark*, 226 Kan. 619, 602 P.2d 1299 (1979).
- 7 Neb.—*State v. Lynch*, 223 Neb. 849, 394 N.W.2d 651 (1986).
- 8 U.S.—*Lecates v. Justice of Peace Court No. 4 of State of Del.*, 637 F.2d 898 (3d Cir. 1980).
The due process rights of indigents, generally, see § 2008.
- 9 Wyo.—*Matter of GP*, 679 P.2d 976 (Wyo. 1984) (parental rights).
- 10 U.S.—*Malone v. U.S. Postal Service*, 526 F.2d 1099 (6th Cir. 1975).
Ill.—*McCowan v. McCowan*, 324 Ill. App. 520, 58 N.E.2d 338 (1st Dist. 1944).
- 11 Ala.—*Ex parte Gradford*, 699 So. 2d 149 (Ala. 1997).
- 12 U.S.—*United Gas Public Service Co. v. State of Texas*, 303 U.S. 123, 58 S. Ct. 483, 82 L. Ed. 702 (1938).
- 13 U.S.—*Clark v. Weeks*, 414 F. Supp. 703 (N.D. Ill. 1976).
- 14 D.C.—*Etheredge v. District of Columbia*, 635 A.2d 908, 33 A.L.R.5th 795 (D.C. 1993).
- 15 Tex.—*Golden Eagle Archery, Inc. v. Jackson*, 24 S.W.3d 362 (Tex. 2000).
- 16 Ala.—*Warner v. Elliot*, 573 So. 2d 275 (Ala. 1990).
- 17 Ala.—*Southern Life and Health Ins. Co. v. Turner*, 586 So. 2d 854 (Ala. 1991).
- 18 U.S.—*Cortez v. Trans Union, LLC*, 617 F.3d 688 (3d Cir. 2010).
- 19 U.S.—*Cortez v. Trans Union, LLC*, 617 F.3d 688 (3d Cir. 2010).

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16D C.J.S. Constitutional Law § 1973

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§ 1973. Jury trial—Impartial jury

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3857, 3990

Jury impartiality is a core requirement of the right to trial by jury guaranteed by the state and federal constitutions.

Jury impartiality is a core requirement of the right to trial by jury guaranteed by the state and federal constitutions.¹ The right to an impartial jury in civil cases is inherent in the principle of due process,² and the very essence of due process would be denied if one or more members of a jury panel were allowed to remain while harboring a bias or prejudice toward one of the parties.³ Due process guarantees to litigants a jury drawn from a fair cross section of the community, under a procedure that does not tend to exclude any discernible or cognizable class of persons.⁴

Thus, a statute requiring that a jury determine whether a nuisance exists be composed of householders violates due process.⁵ In addition to violating equal protection,⁶ racial and gender discrimination in the jury selection process may be prohibited by due process.⁷ A civil litigant's due process rights are not denied by requiring compliance with a statute setting forth an exclusive means for challenging jury selection procedures so long as that statute provides a meaningful opportunity to be heard on the

issue.⁸ A rule does not deny due process by requiring that coparties jointly exercise peremptory challenges when there is no substantial controversy.⁹

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Footnotes

- 1 Conn.—*State v. Mucha*, 137 Conn. App. 173, 47 A.3d 931 (2012).
- 2 U.S.—*Kiernan v. Van Schaik*, 347 F.2d 775, 9 Fed. R. Serv. 2d 47A.1, Case 1 (3d Cir. 1965); *McCoy v. Goldston*, 652 F.2d 654 (6th Cir. 1981).
Okla.—*Cary by and through Cary v. Oneok, Inc.*, 1997 OK 60, 940 P.2d 201 (Okla. 1997), as corrected on denial of reh'g, (July 1, 1997) and as corrected, (Aug. 21, 1997).
Pa.—*Pennsylvania Power & Light Co. v. Gulf Oil Corp.*, 270 Pa. Super. 514, 411 A.2d 1203, 10 A.L.R.4th 1025 (1979).
- 3 Wash.—*Rowley v. Group Health Co-op. of Puget Sound*, 16 Wash. App. 373, 556 P.2d 250 (Div. 1 1976).
- 4 U.S.—*Arbuckle Broadcasters, Inc. v. Rockwell Intern. Corp.*, 513 F. Supp. 407 (N.D. Tex. 1980).
Government employees
An act of Congress making employees and pensioners of the federal government and District of Columbia eligible for jury service in the district was not arbitrary or capricious and thus did not violate the Due Process Clause of the Fifth Amendment.
U.S.—*U.S. v. Wood*, 299 U.S. 123, 57 S. Ct. 177, 81 L. Ed. 78 (1936).
Calling jurors by phone
A procedure of calling jurors by telephone to notify them that they would be required to appear did not deny due process on the theory that the use of the telephone systematically excluded individuals who could not afford one.
Alaska—*Bachner v. Pearson*, 479 P.2d 319, 8 U.C.C. Rep. Serv. 515 (Alaska 1970).
- 5 Fla.—*Thompson v. State*, 392 So. 2d 1317 (Fla. 1981).
- 6 § 1403.
- 7 W. Va.—*Parham v. Horace Mann Ins. Co.*, 200 W. Va. 609, 490 S.E.2d 696 (1997).
- 8 Idaho—*Higuera v. Hiestand*, 128 Idaho 700, 918 P.2d 284 (1996).
- 9 Utah—*Carrier v. Pro-Tech Restoration*, 944 P.2d 346 (Utah 1997).

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16D C.J.S. Constitutional Law § 1974

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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§ 1974. Trial scheduling

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West's Key Number Digest

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Due process requires sufficient preparation time and notice of the trial date and may have an effect on requests for continuances or to advance civil trials.

To comply with due process requirements, notice must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded.¹ Due process requires a reasonable time to prepare for trial,² and to file motions,³ and reasonable notice of the trial date⁴ or that the case has been advanced on the trial calendar.⁵ A trial management plan may be approved if it is consistent with the parties' due process rights.⁶ Due process is denied if a trial is started before the time set for it.⁷ The dismissal of an action because of the plaintiff's failure to appear at the trial after proper notification does not deny due process.⁸ However, if a defendant has filed a written answer or appeared in some manner in an action, due process entitles the defendant to subsequent notice of any trial setting, including a hearing on a motion for default judgment.⁹

Footnotes

- 1 Alaska—*Fidler v. Fidler*, 296 P.3d 11 (Alaska 2013).
Ark.—*X.O.P. v. State*, 2014 Ark. App. 424, 439 S.W.3d 711 (2014).
Conn.—*Quaranta v. Cooley*, 130 Conn. App. 835, 26 A.3d 643 (2011).
Mo.—*In Interest of J.T.*, 447 S.W.3d 212 (Mo. Ct. App. E.D. 2014).
- 2 U.S.—*Galella v. Onassis*, 487 F.2d 986, 17 Fed. R. Serv. 2d 1205, 28 A.L.R. Fed. 879 (2d Cir. 1973).
Ala.—*Ex parte Medical Assur. Co., Inc.*, 862 So. 2d 645 (Ala. 2003).
- 3 Ala.—*Ex parte Medical Assur. Co., Inc.*, 862 So. 2d 645 (Ala. 2003).
Ind.—*Skolnick v. State*, 180 Ind. App. 253, 388 N.E.2d 1156 (1979).
- 4 Ala.—*State v. Harwell*, 85 So. 3d 481 (Ala. Crim. App. 2011).
Mo.—*Searles v. Searles*, 495 S.W.2d 759 (Mo. Ct. App. 1973).
N.M.—*Wells Fargo Bank v. Dax*, 93 N.M. 737, 1979-NMCA-157, 605 P.2d 245 (Ct. App. 1979).
Ohio—*Ohio Valley Radiology Associates, Inc. v. Ohio Valley Hosp. Ass'n*, 28 Ohio St. 3d 118, 502 N.E.2d 599 (1986).
Tex.—*P. Bosco & Sons Contracting Corp. v. Conley, Lott, Nichols Machinery Co.*, 629 S.W.2d 142 (Tex. App. Dallas 1982), writ refused n.r.e., (Apr. 28, 1982).
Some form of notice necessary
La.—*Benware v. Means*, 752 So. 2d 841 (La. 2000).
Clerk assumed duty
Although a party has the duty to follow the case's status, and the court and opposing party have no duty to advise about the scheduled trial date, a party's right to due process is violated if the court clerk assumes the duty of notifying the party but negligently fails to do so.
Ala.—*Ex parte Weeks*, 611 So. 2d 259 (Ala. 1992).
Excess insurer
An umbrella insurer's due process rights were not violated by the entry of judgment against its insured, even though the insurer might not have been given notice that the case had been set for trial, as the insurer had actual notice that the suit was pending and that it was likely that primary coverage would be exhausted and could have intervened.
Ark.—*RLI Ins. Co. v. Coe*, 306 Ark. 337, 813 S.W.2d 783 (1991).
- 5 N.M.—*Los Lunas Consol. School Dist. No. 1, Bd. of Ed. v. Zbur*, 1976-NMSC-036, 89 N.M. 454, 553 P.2d 1261 (1976).
- 6 W. Va.—*State ex rel. Atkins v. Burnside*, 212 W. Va. 74, 569 S.E.2d 150 (2002).
- 7 Tex.—*Rogers v. Texas Commerce Bank-Reagan*, 755 S.W.2d 83 (Tex. 1988).
- 8 Ga.—*East India Co., Inc. v. Marsh & McLennan, Inc.*, 160 Ga. App. 529, 287 S.E.2d 574 (1981).
- 9 Tex.—*Schoendienst v. Haug*, 399 S.W.3d 313 (Tex. App. Austin 2013).
Due process requirements pertaining to default judgments, see §§ 1985, 1986.

16D C.J.S. Constitutional Law § 1975

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

7. Hearing or Trial

b. Procedural Requisites

§ 1975. Trial scheduling—Continuances

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3988, 3989, 3992 to 3998, 4003

The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel.

The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel.¹ If the refusal to grant a continuance interferes with a specific constitutional right, the analysis will involve whether there has been a denial of due process.² If denial of a continuance is directly linked to a constitutional right, then due process rights are implicated, and the claim is of constitutional magnitude.³ Whether the denial of a request for continuance violates due process must be found in the circumstances present in every case,⁴ particularly in the reasons presented to the trial judge at the time the request is denied.⁵ An arbitrary denial of a continuance violates due process⁶ but only if it results in actual prejudice.⁷ Although there are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process, one of the factors

that a court may consider is whether denying the continuance will result in identifiable prejudice to defendant's case and, if so, whether this prejudice is of a material or substantial nature.⁸

Denying a continuance does not violate due process if the party seeking the continuance received adequate notice of the trial, and the trial was held as scheduled.⁹ Furthermore, if a trial has actually commenced, with both sides present, and a continuance is granted, due process requires that some form of notice be given the parties within a reasonable period prior to resuming the trial.¹⁰ The parties in a civil case may have a right to a speedy determination of the action, such as when the defendant is subject to a temporary injunction.¹¹ However, if only property rights are implicated, then a mere postponement of the judicial inquiry is not a denial of due process so long as the opportunity given for the ultimate judicial determination of liability is adequate.¹²

A requirement of rent security for a continuance in an action brought under a forcible entry and wrongful detainer statute under certain circumstances does not violate due process.¹³ The consolidation of trials does not deny due process if there was much common evidence and the trial was continued to allow the gathering of further evidence.¹⁴ Due process is violated, however, when a statutorily mandated continuance is granted for the convenience of a legislator, if the party opposing the continuance faces irreparable harm from the delay in enforcing existing rights.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

To find an abuse of discretion, the refusal to grant a continuance must be so arbitrary as to deny appellant due process, and the burden rests upon appellant to prove actual prejudice and a violation of his rights. [U.S. Const. Amend. 14](#). [Conzelman v. Conzelman](#), 2019 WY 123, 453 P.3d 773 (Wyo. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 Conn.—[Tyler v. Shenkman-Tyler](#), 115 Conn. App. 521, 973 A.2d 163 (2009).
- 2 Conn.—[Tyler v. Shenkman-Tyler](#), 115 Conn. App. 521, 973 A.2d 163 (2009).
- 3 Conn.—[In re Lukas K.](#), 120 Conn. App. 465, 992 A.2d 1142 (2010), judgment aff'd, 300 Conn. 463, 14 A.3d 990 (2011).
- 4 U.S.—[Hernandez v. Holland](#), 750 F.3d 843 (9th Cir. 2014), cert. denied, 135 S. Ct. 253, 190 L. Ed. 2d 187 (2014).
- 5 U.S.—[Hernandez v. Holland](#), 750 F.3d 843 (9th Cir. 2014), cert. denied, 135 S. Ct. 253, 190 L. Ed. 2d 187 (2014).
- 6 Tex.—[Ex parte Blackmon](#), 529 S.W.2d 570 (Tex. Civ. App. Houston 1st Dist. 1975).
- 7 U.S.—[Amouri v. Holder](#), 572 F.3d 29 (1st Cir. 2009).
- 8 U.S.—[Benson v. Sebelius](#), 771 F. Supp. 2d 68 (D.D.C. 2011).
- 9 Mont.—[In re Marriage of Fishbaugh](#), 2002 MT 175, 310 Mont. 519, 52 P.3d 395 (2002).
- 10 Cal.—[Parker v. Dingman](#), 48 Cal. App. 3d 1011, 122 Cal. Rptr. 309 (2d Dist. 1975).
- 11 Wyo.—[Weiss v. State ex rel. Danigan](#), 434 P.2d 761 (Wyo. 1967).
- 12 N.Y.—[300 West 154th St. Realty Co. v. Department of Bldgs. of City of New York](#), 26 N.Y.2d 538, 311 N.Y.S.2d 899, 260 N.E.2d 534 (1970).
- 13 U.S.—[Lindsey v. Normet](#), 405 U.S. 56, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972).

14 N.H.—[Barnard v. Elmer](#), 128 N.H. 386, 515 A.2d 1209 (1986).

15 Tex.—[Waites v. Sondock](#), 561 S.W.2d 772 (Tex. 1977).

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16D C.J.S. Constitutional Law § 1976

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

7. Hearing or Trial

b. Procedural Requisites

§ 1976. Conduct of trial

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3988, 3989, 3992 to 3998, 4003

Due process requires that a trial be conducted according to established rules, and may incorporate certain rights, such as to make arguments or to a record, under certain circumstances.

In a civil proceeding, due process generally requires that a trial be conducted according to some settled course of procedure.¹ A tribunal with competent jurisdiction must conduct an orderly, regular proceeding appropriate to the nature of the case.² When due process under the constitution requires a hearing, it requires a fair one, one before a tribunal that meets established standards of procedure, which is the fair, orderly, and deliberate method by which matters are litigated.³ Any procedure according with the long-established practice of courts of law or equity complies with due process requirements.⁴ Although mere errors of a court in administering valid rules of procedure do not constitute a violation of due process,⁵ consistently making erroneous rulings may deprive a litigant of due process if the cumulative effect of the errors affects the trial's outcome.⁶ Furthermore, particular rules must give way if they are inconsistent with the overriding concepts of due process.⁷

Although due process includes the right to make proper argument,⁸ it does not always require the holding of oral argument.⁹ An adequate record of civil proceedings that result in a loss of liberty is one of the fundamental rights of due process, and an adequate record is essential even in proceedings that do not threaten a defendant's liberty, if a substantial interest is placed in jeopardy.¹⁰ However, a failure to provide means of reporting testimony in small claims court does not deprive a litigant of due process.¹¹ A fear of prejudice does not mean that electronic media coverage of courtroom proceedings is per se a denial of due process.¹²

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Footnotes

- 1 N.H.—*Hollis v. Tilton*, 90 N.H. 119, 5 A.2d 29 (1939), on reh'g, 90 N.H. 119, 6 A.2d 753 (1939).
- 2 Pa.—*Arnold v. W.C.A.B. (Lacour Painting, Inc.)*, 110 A.3d 1063 (Pa. Commw. Ct. 2015).
- 3 Cal.—*Barry v. OC Residential Properties, LLC*, 194 Cal. App. 4th 861, 123 Cal. Rptr. 3d 727 (4th Dist. 2011).
- 4 R.I.—*McAuslan v. McAuslan*, 34 R.I. 462, 83 A. 837 (1912).
Utah—*Peterson v. Evans*, 55 Utah 505, 188 P. 152 (1920).
Bifurcation
Bifurcation of trials on the merits and on the issue of punitive damages is not necessary to assure that tortfeasors receive due process.
Ala.—*Life Ins. Co. of Georgia v. Johnson*, 701 So. 2d 524 (Ala. 1997).
Jurors' questions
The procedure of allowing jurors to ask questions of a witnesses need not, as a matter of due process, be subject to formal adoption.
Conn.—*Spitzer v. Haims and Co.*, 217 Conn. 532, 587 A.2d 105 (1991).
- 5 Neb.—*Insurance Co. of North America v. Hawkins*, 197 Neb. 126, 246 N.W.2d 878 (1976).
Irregularity in proof
U.S.—*Stephenson v. Kirtley*, 269 U.S. 163, 46 S. Ct. 50, 70 L. Ed. 213 (1925).
Erroneous denial of subpoena duces tecum
Ky.—*O'Brien v. O'Brien*, 294 Ky. 793, 172 S.W.2d 595 (1942).
- 6 W. Va.—*Tennant v. Marion Health Care Foundation, Inc.*, 194 W. Va. 97, 459 S.E.2d 374 (1995).
- 7 U.S.—*Burks v. Egeler*, 512 F.2d 221 (6th Cir. 1975).
- 8 U.S.—*Londoner v. City and County of Denver*, 210 U.S. 373, 28 S. Ct. 708, 52 L. Ed. 1103 (1908).
Iowa—*Harter v. State*, 260 Iowa 605, 149 N.W.2d 827 (1967).
Okla.—*Jackson v. Independent School Dist. No. 16 of Payne County*, 1982 OK 74, 648 P.2d 26, 5 Ed. Law Rep. 597 (Okla. 1982).
Pa.—*Pennsylvania State Athletic Commission v. Bratton*, 177 Pa. Super. 598, 112 A.2d 422 (1955).
- 9 U.S.—*George W. Bennett Bryson & Co., Ltd. v. Norton Lilly & Co., Inc.*, 502 F.2d 1045 (5th Cir. 1974); *Pickus v. U.S. Bd. of Parole*, 543 F.2d 240 (D.C. Cir. 1976); *Young v. U.S.*, 94 Fed. Cl. 671 (2010).
Alaska—*Weeks v. Houston*, 2013 WL 386518 (Alaska 2013).
Md.—*Blue Cross of Maryland, Inc. v. Franklin Square Hospital*, 277 Md. 93, 352 A.2d 798 (1976).
- 10 W. Va.—*Smoot v. Dingess*, 160 W. Va. 558, 236 S.E.2d 468 (1977).
The need for the record on appeal, see § 1999.
- 11 Ill.—*Royer v. Bedwell*, 47 Ill. App. 3d 331, 5 Ill. Dec. 662, 361 N.E.2d 1190 (3d Dist. 1977).
- 12 Fla.—*Petition of Post-Newsweek Stations, Florida, Inc.*, 370 So. 2d 764, 14 A.L.R.4th 82 (Fla. 1979).
A.L.R. Library
Validity, propriety, and effect of allowing or prohibiting media's broadcasting, recording, or photographing court proceedings, 14 A.L.R.4th 121.

16D C.J.S. Constitutional Law § 1977

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

7. Hearing or Trial

b. Procedural Requisites

§ 1977. Appearance in person or with counsel

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3988, 3989, 3992 to 3998, 4003

Due process generally includes the right to be personally present in court and represented by counsel although there are limitations on these rights.

The right to a hearing or an opportunity to be heard within the requirement of due process ordinarily includes the right of a party to be present¹ during the taking of testimony or evidence,² although that right is not absolute,³ and to appear in person or by counsel.⁴ Thus, parties to a civil action should be exempted from being excluded from the proceedings, in light of their due process right to participate in the conduct of the case.⁵ However, a litigant,⁶ or counsel⁷ may waive the right to be present at every stage of the trial without offending due process, such as when a party is voluntarily absent.⁸ Confrontation of a civil adversary in the courtroom is not required by due process.⁹

A "hearing," for the purposes of due process, does not mean only an in-person appearance in court.¹⁰ Any right to appear at a civil hearing may be satisfied by allowing an appearance by telephone.¹¹

Although it has been held that there is no due process right to counsel in civil cases or administrative proceedings if the defendant's liberty is not in jeopardy,¹² it has also been said that the right of a litigant to retain counsel in civil litigation is implicit in the constitutional guarantee of due process.¹³ The right to counsel in civil matters is not absolute, and a party's right to choose counsel may be overridden if a state can show compelling reasons.¹⁴ There is no due process right to be represented by an attorney who is not admitted to practice in the state.¹⁵ A litigant who voluntarily decides to proceed pro se may not later complain that he or she was denied the due process right to counsel and a fair trial.¹⁶ Furthermore, a requirement that a corporation appear through an attorney does not deprive an allegedly indigent corporation of its right to due process.¹⁷

Recognizing that a civil litigant has a right to counsel, a trial judge's rule prohibiting a litigant from consulting with his or her attorney during breaks and recesses in the litigant's testimony impinges upon that right and thus constitutes a due process violation.¹⁸ Due process demands the right of a nonparty to appear and to defend in a trial that might jeopardize or destroy that person's interests.¹⁹ However, although litigants have a due process right to counsel, the notion of permitting witnesses' attorneys to participate in civil trials is so inconsistent with the adversary system as to constitute a denial of due process to an objecting party.²⁰

Rights of prisoners.

Although prisoners have a due process right to reasonable access to the courts,²¹ an inmate does not have a constitutional right to attend the jury trial of a civil rights suit that challenges the conditions of the inmate's confinement.²² However, a pro-se incarcerated civil litigant's due process rights are violated by the failure to afford the litigant an opportunity to attend a contradictory hearing on exceptions filed by law enforcement officials and prosecutors who are sued for false imprisonment, malicious prosecution, and intentional infliction of emotional distress.²³

CUMULATIVE SUPPLEMENT

Cases:

District court's justification of visible shackling of state prisoner as civil litigant, merely because he was a convicted felon serving a lengthy prison sentence, was not the particularized consideration of necessity required by due process, for visible shackling of prisoner for three-day jury trial in prisoner's § 1983 action against two correctional officers, asserting Eighth Amendment claims for excessive force and deliberate indifference to serious medical needs. [U.S. Const. Amends. 8, 14; 42 U.S.C.A. § 1983. Claiborne v. Blauser, 934 F.3d 885 \(9th Cir. 2019\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 Iowa—[Harter v. State, 260 Iowa 605, 149 N.W.2d 827 \(1967\).](#)
Ky.—[Davis v. Black, 518 S.W.2d 338 \(Ky. 1974\).](#)
Va.—[Burts v. Burts, 227 Va. 618, 316 S.E.2d 745 \(1984\).](#)
Exclusion from courtroom
Due process and the right to a fair trial ordinarily preclude courts from excluding those parties who are able to understand the proceedings and to assist counsel in the presentation of their cases.

- 2 N.D.—*Reems v. St. Joseph's Hosp. and Health Center*, 536 N.W.2d 666 (N.D. 1995).
Iowa—*Harter v. State*, 260 Iowa 605, 149 N.W.2d 827 (1967).
Minn.—*In re Amalgamated Food Handlers, Local 653-A*, 244 Minn. 279, 70 N.W.2d 267 (1955).
S.C.—*South Carolina Dept. of Social Services v. Wilson*, 352 S.C. 445, 574 S.E.2d 730 (2002).
Wash.—*Esmieu v. Schrag*, 88 Wash. 2d 490, 563 P.2d 203 (1977).
- 3 Ind.—*Niksich v. Cotton*, 810 N.E.2d 1003 (Ind. 2004).
Md.—*Green v. North Arundel Hosp. Ass'n, Inc.*, 366 Md. 597, 785 A.2d 361 (2001).
Right exists, absent extreme conditions
Okla.—*Cary by and through Cary v. Oneok, Inc.*, 1997 OK 60, 940 P.2d 201 (Okla. 1997), as corrected on denial of reh'g, (July 1, 1997) and as corrected, (Aug. 21, 1997).
- 4 U.S.—*In re Oliver*, 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682 (1948).
Iowa—*Harter v. State*, 260 Iowa 605, 149 N.W.2d 827 (1967).
Kan.—*Windholz v. Willis*, 1 Kan. App. 2d 683, 573 P.2d 1100 (1977).
Minn.—*Dickson v. Bober*, 269 Minn. 334, 130 N.W.2d 526 (1964).
Mo.—*Cockrell v. Taylor*, 347 Mo. 1, 145 S.W.2d 416 (1940).
- 5 N.J.—*Morton Bldgs., Inc. v. Rezultz, Inc.*, 127 N.J. 227, 603 A.2d 946 (1992).
- 6 U.S.—*Malone v. U.S. Postal Service*, 526 F.2d 1099 (6th Cir. 1975).
- 7 U.S.—*Arrington v. Robertson*, 114 F.2d 821 (C.C.A. 3d Cir. 1940).
- 8 Ill.—*Yakin v. Yakin*, 107 Ill. App. 3d 1103, 62 Ill. Dec. 547, 436 N.E.2d 573 (1st Dist. 1982).
Wyo.—*Jones v. Jones*, 903 P.2d 545 (Wyo. 1995).
- 9 Okla.—*Matter of Rich*, 1979 OK 173, 604 P.2d 1248 (Okla. 1979).
- 10 Md.—*Miller v. Mathias*, 428 Md. 419, 52 A.3d 53 (2012).
- 11 N.D.—*St. Claire v. St. Claire*, 2004 ND 39, 675 N.W.2d 175 (N.D. 2004).
Entitled to participate by phone
Wyo.—*Tageant v. Tageant*, 909 P.2d 322 (Wyo. 1996).
- 12 Cal.—*Walker v. State Bar*, 49 Cal. 3d 1107, 264 Cal. Rptr. 825, 783 P.2d 184 (1989).
Me.—*Matter of Benoit*, 487 A.2d 1158 (Me. 1985).
- 13 Mont.—*North Central Services, Inc. v. Hafdahl*, 191 Mont. 440, 625 P.2d 56 (1981).
Okla.—*Miami Business Services, LLC v. Davis*, 2013 OK 20, 299 P.3d 477 (Okla. 2013).
- 14 U.S.—*Texas Catastrophe Property Ins. Ass'n v. Morales*, 975 F.2d 1178 (5th Cir. 1992).
- 15 Wis.—*Seitzinger v. Community Health Network*, 2004 WI 28, 270 Wis. 2d 1, 676 N.W.2d 426 (2004).
- 16 Ill.—*Beaver v. Owens*, 20 Ill. App. 3d 573, 315 N.E.2d 53 (1st Dist. 1974).
- 17 Ohio—*Union Sav. Ass'n v. Home Owners Aid, Inc.*, 23 Ohio St. 2d 60, 52 Ohio Op. 2d 329, 262 N.E.2d 558 (1970).
- 18 U.S.—*Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 54 A.L.R. Fed. 825 (5th Cir. 1980) (rejected on other grounds by, *Pashaian v. Eccelston Properties, Ltd.*, 88 F.3d 77 (2d Cir. 1996)).
- 19 N.D.—*National Farmers Union Property & Cas. Co. v. Schmidt*, 219 N.W.2d 111 (N.D. 1974).
- 20 Mich.—*People v. Henderson*, 382 Mich. 582, 171 N.W.2d 436 (1969).
- 21 U.S.—*Bishawi v. GRW Corp.*, 306 Fed. Appx. 283 (7th Cir. 2008) (unpublished opinion).
- 22 U.S.—*Bishawi v. GRW Corp.*, 306 Fed. Appx. 283 (7th Cir. 2008) (unpublished opinion).
- 23 N.D.—*St. Claire v. St. Claire*, 2004 ND 39, 675 N.W.2d 175 (N.D. 2004).
La.—*Godfrey v. Reggie*, 55 So. 3d 1015 (La. Ct. App. 3d Cir. 2011).

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16D C.J.S. Constitutional Law § 1978

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

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§ 1978. Appointment of counsel

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3988, 3989, 3992 to 3998, 4003, 4020, 4021

Due process generally does not require the appointment of counsel in civil cases unless an indigent person's liberty or some other fundamental interest is implicated in the proceeding, or if otherwise required after a due process analysis.

Due process does not typically require the government to provide lawyers for litigants in ordinary¹ civil actions.² However, under certain circumstances, due process entitles indigent persons to the appointment of counsel at state expense.³ Whether due process requires the appointment of counsel is determined on a case-by-case basis,⁴ and depends on the interests involved and the nature of the proceeding,⁵ and on whether the absence of counsel deprives an indigent defendant of fundamental fairness.⁶ The factors in this fairness analysis include (1) the nature of the private interest that will be affected, (2) the comparative risk of an erroneous deprivation of that interest with and without additional or substitute procedural safeguards, and (3) the nature and magnitude of any countervailing interest in not providing additional or substitute procedural requirements.⁷

Due process does not always require the provision of counsel in civil proceedings when incarceration is threatened, and in determining whether it requires a right to counsel, a court must take account of opposing interests, as well as consider the probable value of additional or substitute procedural safeguards.⁸ If the proceeding cannot result in incarceration, the burden rests on an indigent defendant to invoke the remaining elements of the due process analysis, which assesses the private interest at stake, the government's interest, and the risk that the procedures used will lead to erroneous decisions.⁹ The presumption that the appointment of counsel is not required by due process in civil cases that do not implicate a physical liberty interest is a heavy one that is not easily overcome.¹⁰ For the purpose of triggering a defendant's due process right to counsel, the distinction between a "criminal" and a "civil" proceeding is irrelevant if the outcome of the civil proceeding is imprisonment.¹¹ Federal constitutional due process does not automatically require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order even if that individual faces incarceration for up to a year.¹² However, a court-appointed attorney may be required as a matter of due process under a state constitution.¹³

The appointment of counsel may be required if the legal or factual issues raised are difficult or of such complexity that an attorney's assistance is necessary for an adequate presentation of the merits, or if a defendant cannot speak for him- or herself.¹⁴ Thus, due process dictates that an indigent defendant in a civil paternity action, in which the plaintiff is assisted by the State, have the right to the services of appointed counsel since the risk of error is substantial.¹⁵ On the other hand, if the proceedings are informal in nature and if the legal and factual issues generally raised are not complex, the minimum requirements of due process may be satisfied by evaluating the necessity of counsel on a case-by-case basis, with the appointment of counsel for indigents required only if needed to ensure fundamental fairness in the particular case.¹⁶ Accordingly, although due process may bar a state from depriving indigent litigants of an opportunity to defend themselves in a meaningful manner in civil tort actions, the opportunity to appear pro se may be adequate to satisfy due process if the defendant retains a meaningful opportunity to be heard.¹⁷

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Footnotes

- 1 U.S.—*Matter of Trivedi*, 22 B.R. 245 (Bankr. S.D. Ohio 1982).
- 2 Cal.—*In re Marriage of Campi*, 212 Cal. App. 4th 1565, 152 Cal. Rptr. 3d 179 (1st Dist. 2013).
Tex.—*Williams v. Capitol County Mut. Fire Ins. Co.*, 594 S.W.2d 558 (Tex. Civ. App. Fort Worth 1980).
- 3 Cal.—*Chevalier v. Dubin*, 104 Cal. App. 3d 975, 164 Cal. Rptr. 118 (2d Dist. 1980).
Indigents' equal protection right to the appointment of counsel, see § 1410.
- 4 N.C.—*Wake County, ex rel. Carrington v. Townes*, 306 N.C. 333, 293 S.E.2d 95 (1982).
- 5 Cal.—*Salas v. Cortez*, 24 Cal. 3d 22, 154 Cal. Rptr. 529, 593 P.2d 226 (1979).
Ind.—*Kennedy v. Wood*, 439 N.E.2d 1367 (Ind. Ct. App. 1982).
- 6 Conn.—*Lavertue v. Niman*, 196 Conn. 403, 493 A.2d 213 (1985).
- 7 U.S.—*Turner v. Rogers*, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).
- 8 U.S.—*Turner v. Rogers*, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).
- 9 U.S.—*Lassiter v. Department of Social Services of Durham County, N. C.*, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981).
Pa.—*Com. v. \$9,847.00 U.S. Currency*, 550 Pa. 192, 704 A.2d 612 (1997).
Wis.—*Piper v. Popp*, 167 Wis. 2d 633, 482 N.W.2d 353 (1992).
- 10 Pa.—*Com. v. \$9,847.00 U.S. Currency*, 550 Pa. 192, 704 A.2d 612 (1997).
- 11 Mo.—*State ex rel. Family Support Div.-Child Support Enforcement v. Lane*, 313 S.W.3d 182 (Mo. Ct. App. W.D. 2010).
- 12 U.S.—*Turner v. Rogers*, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).
- 13 W. Va.—*Moore v. Hall*, 176 W. Va. 83, 341 S.E.2d 703 (1986).

- 14 N.C.—[Jolly v. Wright](#), 300 N.C. 83, 265 S.E.2d 135 (1980) (overruled on other grounds by, [McBride v. McBride](#), 334 N.C. 124, 431 S.E.2d 14 (1993)).
- 15 Neb.—[State v. Yelli](#), 247 Neb. 785, 530 N.W.2d 250 (1995).
A.L.R. Library
[Right of indigent defendant in paternity suit to have assistance of counsel at state expense](#), 4 A.L.R.4th 363.
- 16 N.C.—[Jolly v. Wright](#), 300 N.C. 83, 265 S.E.2d 135 (1980) (overruled on other grounds by, [McBride v. McBride](#), 334 N.C. 124, 431 S.E.2d 14 (1993)).
- 17 Wis.—[Piper v. Popp](#), 167 Wis. 2d 633, 482 N.W.2d 353 (1992) (prisoner sued for assault).

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

7. Hearing or Trial

b. Procedural Requisites

§ 1979. Appointment of counsel—Termination of parental rights

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3988, 3989, 3992 to 3998, 4003, 4020, 4021

There is authority that, for termination of parental rights adjudication hearings, indigent parents have a right to appointed counsel pursuant to state law and federal due process, and therefore, the failure to allow counsel to effectively participate in severance proceedings is reversible error, although other courts have held that federal due process does not confer that right automatically, and that a trial court must exercise sound judicial discretion to decide whether due process requires the appointment of counsel under the circumstances, subject to review on appeal.

There is authority that, for termination of parental rights adjudication hearings, indigent parents have a right to appointed counsel pursuant to state law and federal due process, and therefore, the failure to allow counsel to effectively participate in severance proceedings is reversible error as the denial of the right to effective participation of counsel constitutes a denial of due process of law so gross as to lack a necessary attribute of a judicial determination.¹ However, other courts have held that federal due process does not confer an automatic right to court-appointed counsel for an indigent parent in a proceeding to terminate parental rights² and that a trial court must exercise sound judicial discretion to decide whether due process requires the appointment of counsel under the circumstances, subject to review on appeal.³ An indigent parent may be entitled, under the due process

clause of a state constitution, to court-appointed counsel in proceedings to terminate parental rights, given the magnitude of the parent's interest.⁴

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Footnotes

- 1 Ariz.—[Christy A. v. Arizona Dept. of Economic Sec.](#), 217 Ariz. 299, 173 P.3d 463 (Ct. App. Div. 1 2007).
- 2 N.D.—[Matter of Adoption of K.A.S.](#), 499 N.W.2d 558 (N.D. 1993).
- 3 Del.—[Matter of Carolyn S. S.](#), 498 A.2d 1095 (Del. 1984).
N.D.—[Matter of Adoption of K.A.S.](#), 499 N.W.2d 558 (N.D. 1993).
A.L.R. Library
[Right of Indigent Parent to Appointed Counsel in Proceeding for Involuntary Termination of Parental Rights](#), 92 A.L.R.5th 379.
- 4 Alaska—[Matter of K.L.J.](#), 813 P.2d 276 (Alaska 1991).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

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§ 1980. Presentation and rebuttal of evidence

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3879 to 3888, 3912, 3953 to 3955, 3957 to 3960, 4038, 4827

Due process requires that a party be given an opportunity to present evidence and challenge the opponent's evidence when an evidentiary hearing is held.

In civil actions, the right to confront and cross-examine witnesses is grounded in due process rather than in the Confrontation Clause,¹ and the due process right to confront an accuser is not an absolute right in a civil matter.² However, the litigants' right to present evidence in court is generally considered essential to due process.³

The right to a due process hearing includes the right to testify,⁴ call witnesses,⁵ and introduce evidence to support contentions,⁶ as well as to rebut the evidence of the other party⁷ and to present objections.⁸

The due process right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them.⁹ It requires that a party have an opportunity to obtain knowledge about,¹⁰

and hear evidence introduced against the party,¹¹ and may include the right to cross-examine witnesses¹² but not always.¹³ Whether due process requires an opportunity to cross-examine in a civil proceeding is determined in light of the particular facts and circumstances of the case,¹⁴ and this opportunity may not be required where testimony is presented by affidavit, and the opponent was given a full opportunity to present his or her side of the case and to dispute the affidavit, and made no showing of an attempt, by deposition or otherwise, to cross-examine the affiant.¹⁵

Although it has been said that a party is generally entitled to a decision on the facts by the judge who heard and saw the witnesses, and a deprivation of that right is a denial of due process,¹⁶ due process does not always require that the judge ruling on the matter have heard the testimony.¹⁷ A successor judge may render a judgment consistent with due process so long as he or she orders a full or partial retrial or, in appropriate cases, becomes familiar with the entire existing record.¹⁸ Due process does not forbid a hearing on a transcript of evidence formerly heard in court.¹⁹ When evidence is not presented in court, due process requires that the parties be apprised of all the evidence and other matters that were brought before the trial judge,²⁰ so that they may have an opportunity to show that it is untrue.²¹ The minimal standards of due process are not met if the trier of facts considers an investigative report without making the contents known to the litigants,²² and giving them the opportunity to cross-examine the person who prepared it,²³ and to rebut the evidence produced by the investigator.²⁴

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Footnotes

- 1 Cal.—*People v. Sarpas*, 225 Cal. App. 4th 1539, 172 Cal. Rptr. 3d 25 (4th Dist. 2014).
 - 2 Ala.—*Alabama State Personnel Bd. v. Miller*, 66 So. 3d 757 (Ala. Civ. App. 2010).
 - 3 Okla.—*Malone v. Malone*, 1979 OK 21, 591 P.2d 296 (Okla. 1979).
 - 4 W. Va.—*Clay v. City of Huntington*, 184 W. Va. 708, 403 S.E.2d 725 (1991).
 - 5 Mass.—*C.O. v. M.M.*, 442 Mass. 648, 815 N.E.2d 582 (2004).
 - 6 Fla.—*Fogel v. Mirmelli*, 413 So. 2d 1204 (Fla. 3d DCA 1982).
 - Kan.—*Santee v. North*, 223 Kan. 171, 574 P.2d 191 (1977).
 - U.S.—*Gonzales v. U.S.*, 348 U.S. 407, 75 S. Ct. 409, 99 L. Ed. 467 (1955); *In re Oliver*, 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 682 (1948).
 - Iowa—*Harter v. State*, 260 Iowa 605, 149 N.W.2d 827 (1967).
 - N.M.—*State ex rel. Reynolds v. Allman*, 1967-NMSC-078, 78 N.M. 1, 427 P.2d 886 (1967).
 - Okla.—*Jackson v. Independent School Dist. No. 16 of Payne County*, 1982 OK 74, 648 P.2d 26, 5 Ed. Law Rep. 597 (Okla. 1982).
 - Pa.—*Allstate Ins. Co. v. Fioravanti*, 451 Pa. 108, 299 A.2d 585, 75 A.L.R.3d 125 (1973).
 - W. Va.—*Menon v. Davis Memorial Associates, Inc.*, 160 W. Va. 453, 235 S.E.2d 817 (1977).
 - Due process considerations with regard to the admissibility of evidence are discussed in § 1959.
 - 7 Colo.—*People v. Shifrin*, 2014 COA 14, 342 P.3d 506 (Colo. App. 2014), cert. denied, 2015 WL 216599 (Colo. 2015).
 - La.—*Crescent River Port Pilots' Ass'n v. Heuer*, 193 So. 2d 276 (La. Ct. App. 4th Cir. 1966).
 - Me.—*Ziehm v. Ziehm*, 433 A.2d 725 (Me. 1981).
 - Okla.—*Jackson v. Independent School Dist. No. 16 of Payne County*, 1982 OK 74, 648 P.2d 26, 5 Ed. Law Rep. 597 (Okla. 1982).
 - Utah—*In re State in Interest of M.*, 25 Utah 2d 101, 476 P.2d 1013, 45 A.L.R.3d 206 (1970).
 - Wyo.—*Sims v. Day*, 2004 WY 124, 99 P.3d 964 (Wyo. 2004).
- Inmate's right to access to courts**
- The fact that an inmate was able to file various pleadings in the courts did not in and of itself render superfluous or frivolous his allegations of a violation of his due process right to access to a law library; for example, the right of access also included a postfiling opportunity to research and formulate rebuttals to authorities cited in the responsive pleadings of the adversary.

- 8 Ga.—*Daker v. Humphrey*, 294 Ga. 504, 755 S.E.2d 201 (2014).
 U.S.—*Strouchler v. Shah*, 891 F. Supp. 2d 504 (S.D. N.Y. 2012).
 Ill.—*People v. Morales*, 2015 IL App (1st) 131207, 388 Ill. Dec. 687, 24 N.E.3d 1260 (App. Ct. 1st Dist. 2015).
 Ind.—*In re H.T.*, 911 N.E.2d 577 (Ind. Ct. App. 2008).
 Kan.—*Landmark Nat. Bank v. Kesler*, 289 Kan. 528, 216 P.3d 158 (2009).
 La.—*Domingue v. Bodin*, 996 So. 2d 654 (La. Ct. App. 3d Cir. 2008).
 Utah—*Salt Lake City Corp. v. Jordan River Restoration Network*, 2012 UT 84, 299 P.3d 990 (Utah 2012), cert. denied, 134 S. Ct. 94, 187 L. Ed. 2d 33 (2013).
 9 Ohio—*Calloway v. Ohio State Med. Bd.*, 2013-Ohio-2069, 990 N.E.2d 673 (Ohio Ct. App. 10th Dist. Franklin County 2013).
 10 Minn.—*In re Amalgamated Food Handlers, Local 653-A*, 244 Minn. 279, 70 N.W.2d 267 (1955).
 N.J.—*Hyman v. Muller*, 1 N.J. 124, 62 A.2d 221 (1948).
 N.C.—*Shepherd v. Shepherd*, 273 N.C. 71, 159 S.E.2d 357 (1968).
 Okla.—*Harmon v. Harmon*, 1997 OK 91, 943 P.2d 599 (Okla. 1997).
 Wyo.—*Sims v. Day*, 2004 WY 124, 99 P.3d 964 (Wyo. 2004).
 11 Iowa—*Harter v. State*, 260 Iowa 605, 149 N.W.2d 827 (1967).
 Mo.—*In re S—M—W—*, 485 S.W.2d 158 (Mo. Ct. App. 1972).
 Pa.—*Allstate Ins. Co. v. Fioravanti*, 451 Pa. 108, 299 A.2d 585, 75 A.L.R.3d 125 (1973).
 12 U.S.—*Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970).
 Cal.—*Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697, 109 Cal. Rptr. 3d 261, 66 A.L.R.6th 751 (3d Dist. 2010).
 Colo.—*People v. Shifrin*, 2014 COA 14, 342 P.3d 506 (Colo. App. 2014), cert. denied, 2015 WL 216599 (Colo. 2015).
 Neb.—*State ex rel. Grape v. Zach*, 247 Neb. 29, 524 N.W.2d 788 (1994).
 Okla.—*McMinn v. City of Oklahoma City*, 1997 OK 154, 952 P.2d 517 (Okla. 1997).
 Or.—*Cole v. Driver and Motor Vehicle Services Branch*, 336 Or. 565, 87 P.3d 1120 (2004).
 Wyo.—*Sims v. Day*, 2004 WY 124, 99 P.3d 964 (Wyo. 2004).

Missing witness

Since the plaintiff was not inhibited or restricted from calling a missing witness, she could not complain about her inability to confront the witness at a due process hearing.

- U.S.—*Cypert v. Independent School Dist. No. I-050 of Osage County*, 661 F.3d 477, 273 Ed. Law Rep. 596 (10th Cir. 2011).
 Constitutionality of rules of evidence restricting the scope of cross-examination, see § 1958.
 13 U.S.—*Muset v. Ishimaru*, 783 F. Supp. 2d 360, 79 Fed. R. Serv. 3d 616 (E.D. N.Y. 2011) (hearing on sanctions against attorney).
 14 Mich.—*In re Brock*, 442 Mich. 101, 499 N.W.2d 752 (1993).

Meaningful opportunity to be heard

When important decisions turn on questions of fact, due process often requires an opportunity to confront and cross-examine adverse witnesses, but due process is not violated if a party is not given the opportunity to confront witnesses, so long as there has been a meaningful opportunity to be heard; in any event, a doctor before a review panel was given an adequate opportunity to confront and cross-examine a witness.

S.C.—*In re Vora*, 354 S.C. 590, 582 S.E.2d 413 (2003).

Opportunity for discovery

A mother was not denied due process by her lack of ability to cross-examine the nonresident father concerning his present income in connection with an action brought under the Uniform Reciprocal Enforcement of Support Act by the father as she had five months to engage in discovery.

- S.D.—*State of Kan. ex rel. Adams v. Adams*, 455 N.W.2d 227 (S.D. 1990).
 15 S.C.—*South Carolina Dept. of Social Services on Behalf of State of Tex. v. Holden*, 319 S.C. 72, 459 S.E.2d 846 (1995) (Uniform Reciprocal Enforcement of Support Act case).
 16 N.D.—*Weigel v. Weigel*, 1999 ND 55, 591 N.W.2d 123 (N.D. 1999).
 17 Iowa—*In re Marriage of Seyler*, 559 N.W.2d 7, 84 A.L.R.5th 775 (Iowa 1997).

Alternatives

If a court holds a hearing to determine the matter of support payments, and one of the parties requests the opportunity to be present, to be heard, and to cross-examine adversary witnesses, due process requires that the court afford the litigant that opportunity, either by hearing the evidence itself, referring the case to a commissioner, or ordering that the evidence be taken by deposition.

Va.—*Burts v. Burts*, 227 Va. 618, 316 S.E.2d 745 (1984).

Iowa.—*In re Marriage of Seyler*, 559 N.W.2d 7, 84 A.L.R.5th 775 (Iowa 1997).

U.S.—*De La Rama v. De La Rama*, 241 U.S. 154, 36 S. Ct. 518, 60 L. Ed. 932 (1916).

No review of videotape required

A divorce court may reject the legal conclusions of a domestic relations commissioner on child custody issues without reviewing a videotape of the proceeding so long as the parties were given an ample opportunity to present their exceptions and contentions.

Ky.—*Squires v. Squires*, 854 S.W.2d 765 (Ky. 1993).

Fla.—*Hosking v. Hosking*, 318 So. 2d 559 (Fla. 2d DCA 1975).

Okla.—*Malone v. Malone*, 1979 OK 21, 591 P.2d 296 (Okla. 1979).

La.—*Curro Underwriters, Inc. v. Guastella Const. Co.*, 195 So. 2d 300 (La. Ct. App. 4th Cir. 1967).

Okla.—*Malone v. Malone*, 1979 OK 21, 591 P.2d 296 (Okla. 1979).

Amended report

Pa.—*In re Butler Tp. Butler County*, 428 Pa. 1, 235 A.2d 596 (1967).

Colo.—*Anderson v. Anderson*, 167 Colo. 88, 445 P.2d 397 (1968).

D.C.—*Scott v. Scott*, 415 A.2d 812 (D.C. 1980).

Mont.—*Matter of M.L.H.*, 220 Mont. 288, 715 P.2d 32 (1986).

Okla.—*Malone v. Malone*, 1979 OK 21, 591 P.2d 296 (Okla. 1979).

Ill.—*People ex rel. Bernat v. Bicek*, 405 Ill. 510, 91 N.E.2d 588 (1950).

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

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§ 1981. Qualifications and conduct of judge

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West's Key Number Digest

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A competent and impartial judge is a prime requisite of due process.

A civil defendant, by virtue of due process, is entitled to a legally trained judge at some point during the process of adjudication,¹ who is competent to pass on the subject matter of the suit.² However, the lack of professional legal training of a justice of the peace does not necessarily render a judgment in violation of due process.³ Due process demarks only the outer boundaries of judicial disqualifications, and Congress and the states remain free to impose more rigorous standards for judicial disqualification than those mandated as a matter of due process.⁴ Although a fair trial in a fair tribunal is a basic requirement of due process, most matters relating to judicial disqualification do not rise to a constitutional level.⁵ Thus, matters of kinship, personal bias, state policy, and remoteness of interest are ordinarily matters merely of legislative discretion.⁶

A hearing must be before an impartial tribunal,⁷ which requires a neutral and detached hearing body or officer.⁸ A litigant is denied due process if the case is heard before a judge who harbors a bias or prejudice that would deny the litigant a fair trial.⁹ Judicial bias is a deep-seated favoritism or antagonism that makes fair judgment impossible, and a biased decision-maker is constitutionally unacceptable under due process principles.¹⁰ At a minimum, the due process guarantee of a fair and impartial tribunal requires that the trier of fact be disinterested and free from any form of bias or predisposition regarding the outcome of the case.¹¹ Indeed, fairness requires both an absence of actual bias in the trial of cases,¹² and the appearance of complete fairness.¹³ Thus, due process may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.¹⁴

In lieu of exclusive reliance on personal inquiry by the judge, or on appellate review of the judge's determination respecting actual bias, due process is implemented, in the area of judicial recusal, by objective standards¹⁵ that do not require proof of actual bias.¹⁶ In defining these standards, the court asks whether, under a realistic appraisal of psychological tendencies and human weakness, the interest in question poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.¹⁷ The court must objectively determine whether the probability of actual bias is too high to ensure the protection of a party's due process rights.¹⁸

Due process requires that the judge have no financial interest in the outcome of the litigation.¹⁹ Since due process mandates that every civil litigant be entitled to a trial in a system that, in practical operation, is free of temptation to a trial judge, a fee system providing for the compensation of justice court judges depending directly on the volume of cases filed violates due process since it presents a possible temptation.²⁰

The conduct or remarks of the trial judge during the course of a trial, such as the striking of relevant evidence, may constitute a denial of due process.²¹ Due process is similarly violated if a judge permits ex parte communications.²² However, a litigant is not denied due process by a judge's expression of his or her view on a question of law.²³ To assure due process, a ruling on a recusal request must be made on the record.²⁴

CUMULATIVE SUPPLEMENT

Cases:

The Fourteenth Amendment's due process clause may sometimes demand recusal even when a judge has no actual bias. [U.S.C.A. Const.Amend. 14. *Rippo v. Baker*, 137 S. Ct. 905 \(2017\).](#)

Recusal is required under the Fourteenth Amendment's due process clause when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. [U.S.C.A. Const.Amend. 14. *Rippo v. Baker*, 137 S. Ct. 905 \(2017\).](#)

Due process guarantees an absence of actual bias on the part of a judge. [U.S.C.A. Const.Amend. 14. *Williams v. Pennsylvania*, 136 S. Ct. 1899 \(2016\).](#)

Under the Due Process Clause, no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. [U.S.C.A. Const.Amend. 14. *Williams v. Pennsylvania*, 136 S. Ct. 1899 \(2016\).](#)

Due process demarks only the outer boundaries of judicial disqualifications. [U.S.C.A. Const.Amend. 14. *Williams v. Pennsylvania*, 136 S. Ct. 1899 \(2016\).](#)

Due process entitles criminal defendant to a proceeding in which he may present his case with assurance that no member of the court is predisposed to find against him. [U.S.C.A. Const.Amend. 14](#). [Williams v. Pennsylvania](#), 136 S. Ct. 1899 (2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S.—Lecates v. Justice of Peace Court No. 4 of State of Del.](#), 637 F.2d 898 (3d Cir. 1980).
- 2 [Ala.—McCullum v. Birmingham Post Co.](#), 259 Ala. 88, 65 So. 2d 689 (1953).
[Fla.—Bussey v. Legislative Auditing Committee of Legislature](#), 298 So. 2d 219 (Fla. 1st DCA 1974).
[N.J.—Taylor v. Phox Bus Co.](#), 129 N.J. Eq. 610, 20 A.2d 343 (Ct. Err. & App. 1941).
[W. Va.—Hinkle v. Bauer Lumber & Home Bldg. Center, Inc.](#), 158 W. Va. 492, 211 S.E.2d 705 (1975).
[Wis.—Ocean Acc. & Guarantee Corp. v. Poulsen](#), 244 Wis. 286, 12 N.W.2d 129, 152 A.L.R. 810 (1943).
- 3 [W. Va.—State ex rel. Reece v. Gies](#), 156 W. Va. 729, 198 S.E.2d 211 (1973).
- 4 [U.S.—Caperton v. A.T. Massey Coal Co., Inc.](#), 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).
- 5 [U.S.—Caperton v. A.T. Massey Coal Co., Inc.](#), 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009);
[Suh v. Pierce](#), 630 F.3d 685 (7th Cir. 2011).
- 6 [U.S.—Suh v. Pierce](#), 630 F.3d 685 (7th Cir. 2011).
[Tex.—Barfield v. State](#), 2015 WL 1544790 (Tex. App. Houston 14th Dist. 2015).
- 7 [U.S.—Marshall v. Jerrico, Inc.](#), 446 U.S. 238, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980); [Kwong Hai Chew v. Colding](#), 344 U.S. 590, 73 S. Ct. 472, 97 L. Ed. 576 (1953); [Willis v. City of Virginia Beach](#), 2015 I.E.R. Cas. (BNA) 177704, 2015 WL 1011542 (E.D. Va. 2015).
[Alaska—RBG Bush Planes, LLC v. Kirk](#), 340 P.3d 1056 (Alaska 2015).
[Cal.—Creed-21 v. City of San Diego](#), 234 Cal. App. 4th 488, 184 Cal. Rptr. 3d 128 (4th Dist. 2015).
[Idaho—State v. Sandoval-Tena](#), 138 Idaho 908, 71 P.3d 1055 (2003).
[Md.—Archer v. State](#), 383 Md. 329, 859 A.2d 210 (2004).
[Miss.—Freeman v. Public Employees' Retirement System of Mississippi](#), 822 So. 2d 274 (Miss. 2002).
[Mo.—State v. Taylor](#), 929 S.W.2d 209 (Mo. 1996).
[S.D.—Gauer v. Kadoka School Dist. No. 35-1](#), 2002 SD 73, 647 N.W.2d 727, 167 Ed. Law Rep. 407 (S.D. 2002).
[Tex.—Barfield v. State](#), 2015 WL 1544790 (Tex. App. Houston 14th Dist. 2015).
- 8 [Tex.—Barfield v. State](#), 2015 WL 1544790 (Tex. App. Houston 14th Dist. 2015).
- 9 [Va.—Oley v. Branch](#), 63 Va. App. 681, 762 S.E.2d 790 (2014).
- 10 [U.S.—Coley v. Bagley](#), 706 F.3d 741 (6th Cir. 2013), cert. denied, 134 S. Ct. 513, 187 L. Ed. 2d 371 (2013).
No right to particular judge
The Fifth Amendment's Due Process Clause guarantees the right to an impartial decision-maker, but not to a particular judge.
[U.S.—Firishchak v. Holder](#), 636 F.3d 305 (7th Cir. 2011).
- 11 [N.M.—American Federation of State, County and Mun. Employees v. Martinez](#), 2011-NMSC-018, 150 N.M. 132, 257 P.3d 952 (2011).
- 12 [U.S.—Caperton v. A.T. Massey Coal Co., Inc.](#), 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009);
[Hurles v. Ryan](#), 752 F.3d 768 (9th Cir. 2014), petition for certiorari filed, 135 S. Ct. 710, 190 L. Ed. 2d 461 (2014).
- 13 [N.M.—American Federation of State, County and Mun. Employees v. Martinez](#), 2011-NMSC-018, 150 N.M. 132, 257 P.3d 952 (2011).
- 14 [U.S.—Caperton v. A.T. Massey Coal Co., Inc.](#), 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).
- 15 [U.S.—Caperton v. A.T. Massey Coal Co., Inc.](#), 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).
- 16 [U.S.—Caperton v. A.T. Massey Coal Co., Inc.](#), 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).
[Nev.—Ivey v. Dist. Ct.](#), 299 P.3d 354, 129 Nev. Adv. Op. No. 16 (Nev. 2013).

- 17 U.S.—[Caperton v. A.T. Massey Coal Co., Inc.](#), 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).
 - 18 Nev.—[Ivey v. Dist. Ct.](#), 299 P.3d 354, 129 Nev. Adv. Op. No. 16 (Nev. 2013).
 - 19 U.S.—[Bradford Audio Corp. v. Pious](#), 392 F.2d 67, 12 Fed. R. Serv. 2d 216 (2d Cir. 1968).
 - Cal.—[Haas v. County of San Bernardino](#), 27 Cal. 4th 1017, 119 Cal. Rptr. 2d 341, 45 P.3d 280 (2002).
 - Del.—[Lacy v. Green](#), 428 A.2d 1171 (Del. Super. Ct. 1981).
 - Okla.—[Pierce v. Pierce](#), 2001 OK 97, 39 P.3d 791 (Okla. 2001), as corrected, (Nov. 21, 2001) and as modified, (Nov. 27, 2001).
 - Pa.—[Com. v. Jones](#), 541 Pa. 351, 663 A.2d 142 (1995).
 - Wash.—[State v. Moreno](#), 147 Wash. 2d 500, 58 P.3d 265 (2002).
 - Wis.—[State ex rel. Strykowski v. Wilkie](#), 81 Wis. 2d 491, 261 N.W.2d 434 (1978).
- Campaign contributions**
- In deciding whether recusal was required as a matter of due process based upon campaign contributions that a state supreme court of appeals judge had received from a litigant, the inquiry centered on the contribution's relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect that the contribution had on the election outcome.
- U.S.—[Caperton v. A.T. Massey Coal Co., Inc.](#), 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009) (requiring recusal).
 - 20 U.S.—[Brown v. Vance](#), 637 F.2d 272 (5th Cir. 1981).
 - W. Va.—[State ex rel. Reece v. Gies](#), 156 W. Va. 729, 198 S.E.2d 211 (1973).
 - 21 Pa.—[Martin v. Philadelphia Gardens](#), 348 Pa. 232, 35 A.2d 317 (1944).
 - 22 U.S.—[Camero v. U. S.](#), 179 Ct. Cl. 520, 375 F.2d 777 (1967).
 - 23 Ill.—[Board of Trustees of Community College Dist. No. 508, Cook County v. Cook County College Teachers Union, Local 1600, AFT, AFL-CIO](#), 42 Ill. App. 3d 1056, 1 Ill. Dec. 807, 356 N.E.2d 1089 (1st Dist. 1976).
 - 24 Okla.—[Clark v. Board of Educ. of Independent School District No. 89 of Oklahoma County](#), 2001 OK 56, 32 P.3d 851, 157 Ed. Law Rep. 911 (Okla. 2001).

16D C.J.S. Constitutional Law § 1982

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

8. Judgments

a. In General

§ 1982. Due process protections concerning judgment in civil proceedings, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4008 to 4015, 4386, 4387

Due process requirements apply to all judgments in civil proceedings, and a judgment is void if the proceedings on which it was based were inconsistent with due process.

The due process requirements of the federal and state constitutions apply to all judgments in civil proceedings.¹ Due process of law is essential to a valid judgment,² and the validity of a judgment or order, for due process purposes, depends on whether the interested party has received notice and has been afforded an opportunity to defend against its entry.³ A judgment is void if a court acted in a manner inconsistent with due process in proceedings on which the judgment was based,⁴ as where notice and opportunity to be heard was denied,⁵ or the court lacked jurisdiction.⁶ A judgment is void for want of due process if the court exceeded its jurisdiction⁷ or acted without any judicial determination of the facts that could support the judgment.⁸ On the other hand, due process is not denied by a court's adopting the language of a proposed order tendered by one party so long as the opponent was provided an adequate opportunity to voice objections, and the court considered them.⁹

Due process does not permit a judgment against a defendant that is not supported by the complaint and evidence or tried with the consent of the parties.¹⁰ A judgment is void if it is not authorized by the pleadings, evidence, or findings,¹¹ such as when it purports to award relief that goes beyond what was sought in the complaint.¹² Thus, a default judgment cannot award more relief than a complaint requests without violating due process.¹³ This principle applies to marital dissolutions.¹⁴

A judgment may be void for lack of due process if the statute under which it is rendered is unconstitutional,¹⁵ or the judgment was entered in violation of applicable rules.¹⁶ However, a judgment that is merely erroneous does not amount to a denial of due process,¹⁷ and a judgment sufficiently complies with due process even when incorrect on the facts or the law (or both) if it is rendered by a court of competent jurisdiction and is based on due observance of essential procedural requirements.¹⁸

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Footnotes

- 1 U.S.—[Montgomery v. Eidson](#), 123 F. Supp. 292 (W.D. Mo. 1954).
Divorce judgments
Ky.—[Wilburn v. Wilburn](#), 296 Ky. 781, 178 S.W.2d 585 (1944).
N.Y.—[Chapman v. Chapman](#), 284 A.D. 504, 132 N.Y.S.2d 707 (3d Dep't 1954).
Nunc pro tunc judgment
A court's effort to enter a nunc pro tunc judgment against a principal debtor over a year after a writ of garnishment was issued, and without a statement of claim being filed, was a denial of due process.
Pa.—[General Maintenance Engineers v. Pacific Vegetable Oil Corp.](#), 175 Pa. Super. 350, 104 A.2d 505 (1954).
- 2 Mich.—[Ward v. Hunter Machinery Co.](#), 263 Mich. 445, 248 N.W. 864 (1933).
Tex.—[Lighthouse Inns, Inc. v. Mansfield](#), 616 S.W.2d 446 (Tex. Civ. App. Fort Worth 1981).
- 3 Ala.—[M.H. v. Jer. W.](#), 51 So. 3d 334 (Ala. Civ. App. 2010).
R.I.—[In re Stephanie B.](#), 826 A.2d 985 (R.I. 2003).
- 4 U.S.—[Sagers v. Yellow Freight Systems, Inc.](#), 68 F.R.D. 686 (N.D. Ga. 1975).
Ala.—[Insurance Management and Admin., Inc. v. Palomar Ins. Corp.](#), 590 So. 2d 209 (Ala. 1991).
Haw.—[In re Genesys Data Technologies, Inc.](#), 95 Haw. 33, 18 P.3d 895 (2001).
Idaho—[Prather v. Loyd](#), 86 Idaho 45, 382 P.2d 910 (1963).
Kan.—[Colorado Interstate Gas Co. v. Beshears](#), 271 Kan. 596, 24 P.3d 113 (2001); [Bazine State Bank v. Pawnee Production Service, Inc.](#), 245 Kan. 490, 781 P.2d 1077 (1989).
Custody
Awarding child custody to the paternal grandmother violated the mother's due process rights, in light of the father's consistent insistence that he sought custody only for himself and the trial court's ruling that had forbidden all inquiry into the grandmother's custodial qualifications.
Conn.—[Cappetta v. Cappetta](#), 196 Conn. 10, 490 A.2d 996 (1985).
Stipulation
A defendant's right to procedural due process was violated when a court adopted an unauthorized stipulation as its judgment, without providing the defendant with an opportunity to challenge the stipulation's validity.
Me.—[Hamill v. Bay Bridge Associates](#), 1998 ME 181, 714 A.2d 829 (Me. 1998).
Transcript
A promissory note maker's due process rights were denied when a judge decided the case before a transcript had been prepared of the proceedings and it had been agreed that the matter would be decided on the transcript.
Neb.—[Newman v. Rehr](#), 263 Neb. 111, 638 N.W.2d 863 (2002).
- 5 D.C.—[Doe v. District of Columbia Metropolitan Police Dept.](#), 948 A.2d 1210 (D.C. 2008).
Idaho—[McGrew v. McGrew](#), 139 Idaho 551, 82 P.3d 833 (2003).
Ohio—[State ex rel. Ballard v. O'Donnell](#), 50 Ohio St. 3d 182, 553 N.E.2d 650 (1990).
Abrupt termination of proceedings

A wife in divorce proceedings was deprived of an opportunity to be heard and present her case throughout trial in violation of due process where the trial court abruptly stopped the proceedings in order to complete trial in one day; the wife was severely restricted in the time to examine witnesses, call her own witnesses, or make any argument as to the evidence presented, and neither party was given an opportunity to present closing arguments.

Fla.—[Julia v. Julia](#), 146 So. 3d 516 (Fla. 4th DCA 2014).

6 U.S.—[West v. Capitol Federal Sav. and Loan Ass'n](#), 558 F.2d 977, 23 Fed. R. Serv. 2d 1092 (10th Cir. 1977).

Kan.—[Matter of Marriage of Hampshire](#), 261 Kan. 854, 934 P.2d 58 (1997).

Or.—[State ex rel. Karr v. Shorey](#), 281 Or. 453, 575 P.2d 981 (1978).

Tex.—[Aetna Cas. & Sur. Co. v. Dobbs](#), 416 S.W.2d 869 (Tex. Civ. App. Eastland 1967).

In rem judgment

A judgment in rem without jurisdiction over the res is not due process.

Md.—[Staley v. Safe Deposit & Trust Co. of Baltimore](#), 189 Md. 447, 56 A.2d 144 (1947).

7 U.S.—[Brinkerhoff-Faris Trust & Savings Co. v. Hill](#), 281 U.S. 673, 50 S. Ct. 451, 74 L. Ed. 1107 (1930);

[Postal Telegraph Cable Co. v. City of Newport, Ky.](#), 247 U.S. 464, 38 S. Ct. 566, 62 L. Ed. 1215 (1918).

Acted without proper authority

Wyo.—[Exotex Corp. v. Rinehart](#), 3 P.3d 826 (Wyo. 2000).

8 Ill.—[Hultberg v. Anderson](#), 252 Ill. 607, 97 N.E. 216 (1911).

9 Ala.—[Robbins v. Sanders](#), 890 So. 2d 998 (Ala. 2004), as modified on denial of reh'g, (Apr. 30, 2004).

10 Fla.—[Gelkop v. Gelkop](#), 384 So. 2d 195 (Fla. 3d DCA 1980) (disapproved of on other grounds by, [Charles v. Laura](#), 436 So. 2d 227 (Fla. 4th DCA 1983)).

Md.—[Blue Cross of Maryland, Inc. v. Franklin Square Hospital](#), 277 Md. 93, 352 A.2d 798 (1976).

Tex.—[Carreon v. Texas State Dept. of Public Welfare](#), 537 S.W.2d 345 (Tex. Civ. App. San Antonio 1976).

Charge conference

Due process prohibited the defendants from being found liable on a theory of which they were first apprised at a charge conference after all of the evidence had been introduced.

Fla.—[Tamiami Trail Tours, Inc. v. Cotton](#), 463 So. 2d 1126 (Fla. 1985).

Reformation by court

A court's reformation of a contract violated the seller's right to procedural due process as the parties did not dispute that issue, and the court did not make it known to the parties that it was being considered, thus depriving the seller of reasonable, prior notice of the particular issue and an opportunity to develop the facts.

Nev.—[Ivory Ranch, Inc. v. Quinn River Ranch, Inc.](#), 101 Nev. 471, 705 P.2d 673 (1985).

11 Fla.—[Johnston v. Orange County](#), 342 So. 2d 1031 (Fla. 4th DCA 1977).

Md.—[Travelers Indem. Co. v. Nationwide Const. Corp.](#), 244 Md. 401, 224 A.2d 285 (1966).

12 Wash.—[Matter of Marriage of Leslie](#), 112 Wash. 2d 612, 772 P.2d 1013 (1989).

Relief awarded in a default judgment, see § 1985.

13 Cal.—[Biscaro v. Stern](#), 181 Cal. App. 4th 702, 104 Cal. Rptr. 3d 817 (2d Dist. 2010).

Default judgments as complying with due process requirements, §§ 1985, 1986.

14 Cal.—[Biscaro v. Stern](#), 181 Cal. App. 4th 702, 104 Cal. Rptr. 3d 817 (2d Dist. 2010).

15 U.S.—[American Fidelity Fire Ins. Co. v. Paste-Ups Unlimited, Inc.](#), 368 F. Supp. 219 (S.D. N.Y. 1973).

16 D.C.—[Liss v. Feld](#), 691 A.2d 145 (D.C. 1997) (arbitration).

17 U.S.—[Shemaitis v. Reid](#), 193 F.2d 119 (7th Cir. 1951).

Ky.—[Country Distillers Products v. Samuels, Inc.](#), 309 Ky. 262, 217 S.W.2d 216 (1948).

Mo.—[Odom v. Langston](#), 356 Mo. 1140, 205 S.W.2d 518 (1947).

Ohio—[Holmes v. Bowen](#), 60 Ohio App. 168, 12 Ohio Op. 527, 13 Ohio Op. 544, 27 Ohio L. Abs. 266, 27 Ohio L. Abs. 423, 19 N.E.2d 974 (1st Dist. Hamilton County 1938).

Error in entry

Ill.—[Abrams v. Awotin](#), 388 Ill. 42, 57 N.E.2d 464 (1944).

Invalid judicial signature

A former wife could not collaterally attack, over three years after judgment was entered, a judgment entry of divorce that was voidable, but not void, due to the trial court's improper delegation of its judgment-entry signatory duties to a magistrate, as the defective signature was easily discoverable, it in no way infringed on the parties' due process rights, and the parties explicitly relied on the validity of the underlying divorce in order to remarry.

18 Ohio—[Miller v. Nelson-Miller](#), 132 Ohio St. 3d 381, 2012-Ohio-2845, 972 N.E.2d 568 (2012).
U.S.—[Corrigan v. Buckley](#), 271 U.S. 323, 46 S. Ct. 521, 70 L. Ed. 969 (1926); [Bullock v. State of Florida ex rel. Railroad Commission of State of Florida](#), 254 U.S. 513, 41 S. Ct. 193, 65 L. Ed. 380 (1921).

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16D C.J.S. Constitutional Law § 1983

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

8. Judgments

a. In General

§ 1983. Summary judgment

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4008 to 4015, 4386, 4387

Due process generally requires an opportunity to respond to a motion for summary judgment but not necessarily an oral hearing if it can be decided on the papers.

Although due process is not necessarily violated by entry of a summary judgment, despite a lack of a hearing on a motion for summary judgment, if a decision can be reached on the papers,¹ due process requires that a party be given a reasonable opportunity to contest the motion.² A violation occurs if a litigant is denied an opportunity to be heard on the merits before summary judgment is granted,³ such as when the affidavits supporting the motion do not provide clear and convincing admissible evidence on all elements, and the respondent counters with affidavits supported with documentation contesting certain elements of the case.⁴ Although summary judgment rules do not ordinarily authorize summary judgment in favor of a nonmoving party, granting such a judgment does not violate due process if all relevant evidence is before the court, and the requisites for awarding summary judgment are satisfied.⁵

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Footnotes

- 1 U.S.—*Claus v. Gyorkey*, 674 F.2d 427, 3 Ed. Law Rep. 512, 33 Fed. R. Serv. 2d 1542 (5th Cir. 1982); U.S. v. *Fisher-Otis Co., Inc.*, 496 F.2d 1146 (10th Cir. 1974); *Yeager v. Drug Enforcement Administration*, 678 F.2d 315 (D.C. Cir. 1982).
Ala.—*Alabama Home Mortg. Co., Inc. v. Harris*, 582 So. 2d 1080 (Ala. 1991).
Mo.—*King General Contractors, Inc. v. Reorganized Church of Jesus Christ of Latter Day Saints*, 821 S.W.2d 495 (Mo. 1991).
Diligent effort to notify respondent of hearing on motion
Ala.—*Dillard v. Southern States Ford, Inc.*, 541 So. 2d 483 (Ala. 1989).
- 2 Ga.—*Coweta County v. Simmons*, 269 Ga. 694, 507 S.E.2d 440 (1998).
Due process where response filed and motion argued
Ala.—*Alabama Home Mortg. Co., Inc. v. Harris*, 582 So. 2d 1080 (Ala. 1991).
Telephonic participation
A trial court denied an incarcerated homeowner due process by failing to allow her to appear telephonically at a summary judgment hearing in the homeowners association's action to foreclose a lien for unpaid assessments, as the homeowner apprised the trial court of her desire to participate telephonically at the hearing by filing an appropriate and timely motion, and the homeowner had a clear right to so participate.
Fla.—*Hubsch v. Howell Creek Reserve Community*, 155 So. 3d 474 (Fla. 5th DCA 2015).
- 3 U.S.—*Management Investors v. United Mine Workers of America*, 610 F.2d 384, 28 Fed. R. Serv. 2d 591 (6th Cir. 1979).
Tex.—*Axcell v. Phillips*, 473 S.W.2d 554 (Tex. Civ. App. Houston 1st Dist. 1971), writ refused n.r.e., (Feb. 9, 1972).
Motion granted on same day as filed
Mo.—*Lawson v. St. Louis-San Francisco Ry. Co.*, 629 S.W.2d 648 (Mo. Ct. App. E.D. 1982).
- 4 Wyo.—*In re HC*, 983 P.2d 1205 (Wyo. 1999).
- 5 Ohio—*Todd Dev. Co., Inc. v. Morgan*, 116 Ohio St. 3d 461, 2008-Ohio-87, 880 N.E.2d 88 (2008).

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16D C.J.S. Constitutional Law § 1984

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

8. Judgments

a. In General

§ 1984. Confession of judgment

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4008 to 4015, 4386, 4387

Statutes on confession of judgment do not per se violate due process, but a showing that the waiver of notice and hearing was knowing and voluntary may be required.

A confession of judgment statute that permits implementation of a waiver of the right to notice and hearing prior to judgment does not, in itself, deny due process.¹ However, due process requires that the consent involved in the warrant-of-attorney or in signing the document containing the confession-of-judgment clause must be knowing, intelligent, and voluntary.² A prior hearing to determine whether there has been a knowing and intelligent waiver may be required by due process³ but not always.⁴

Although due process notice and hearing requirements may apply to a confession of judgment, in cases where no lawsuit was commenced before the plaintiff asked the debtor to sign the confession,⁵ the due process requirements of reasonable notice and an opportunity to be heard may be knowingly and voluntarily waived in some circumstances,⁶ or a postjudgment hearing may

afford the requisite due process.⁷ Furthermore, a provision for postjudgment notice and hearing before a confessed judgment is executed may be necessary before due process is satisfied.⁸

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Footnotes

- 1 U.S.—*Tunheim v. Bowman*, 366 F. Supp. 1392 (D. Nev. 1973); *Chittester v. LC-DC-F Emp. of G. E. Federal Credit Union*, 384 F. Supp. 475 (W.D. Pa. 1974).
Ill.—*Irmco Hotels Corp. v. Solomon*, 27 Ill. App. 3d 225, 326 N.E.2d 542 (1st Dist. 1975).
Md.—*Meyer v. Gyro Transport Systems, Inc.*, 263 Md. 518, 283 A.2d 608 (1971).
N.D.—*1st Summit Bank v. Samuelson*, 1998 ND 113, 580 N.W.2d 132 (N.D. 1998).
Tex.—*Strick Lease, Inc. v. Cutler*, 759 S.W.2d 776 (Tex. App. El Paso 1988).
Wis.—*Meier v. Purdun*, 94 Wis. 2d 558, 288 N.W.2d 839 (1980).
Wyo.—*Gifford v. Casper Neon Sign Co., Inc.*, 618 P.2d 547 (Wyo. 1980).
Welfare recipient
A requirement of a state welfare department that, as a condition for receiving assistance, applicants having certain "property" sign a form that, by a confession of judgment, gives the State security for reimbursement does not violate due process as permitting the entry of judgment without any hearing on the underlying claim since when judgment is confessed, the State considers the lien to be a dormant security under which the State carries the burden of establishing the actual amount of assistance and of overcoming any defense interposed by the recipient.
U.S.—*Charleston v. Wohlgemuth*, 332 F. Supp. 1175 (E.D. Pa. 1971), judgment aff'd, 405 U.S. 970, 92 S. Ct. 1204, 31 L. Ed. 2d 246 (1972).
- 2 U.S.—*Choi v. Kim*, 50 F.3d 244, 31 Fed. R. Serv. 3d 1253 (3d Cir. 1995).
Del.—*Cheidem Corp. v. Farmer*, 449 A.2d 1061 (Del. Super. Ct. 1982).
N.D.—*1st Summit Bank v. Samuelson*, 1998 ND 113, 580 N.W.2d 132 (N.D. 1998).
Consent order in child abuse case
N.H.—*In re Kerry D.*, 144 N.H. 146, 737 A.2d 662 (1999).
- 3 U.S.—*Osmond v. Spence*, 359 F. Supp. 124 (D. Del. 1972); *Virgin Islands Nat. Bank v. Tropical Ventures, Inc.*, 9 V.I. 429, 358 F. Supp. 1203 (D.V.I. 1973).
- 4 U.S.—*FRG, Inc. v. Manley*, 919 F.2d 850 (3d Cir. 1990) (statute not facially unconstitutional in failing to include provision for challenging waiver determination).
Md.—*Billingsley v. Lincoln Nat. Bank*, 271 Md. 683, 320 A.2d 34 (1974) (rule afforded opportunity after judgment to present any defenses).
- 5 N.D.—*Underwood Farmers Elevator v. Leidholm*, 460 N.W.2d 711 (N.D. 1990).
- 6 Minn.—*Majestic Inc. v. Berry*, 593 N.W.2d 251 (Minn. Ct. App. 1999).
N.J.—*Tara Enterprises, Inc. v. Daribar Management Corp.*, 369 N.J. Super. 45, 848 A.2d 27 (App. Div. 2004).
- 7 N.J.—*Tara Enterprises, Inc. v. Daribar Management Corp.*, 369 N.J. Super. 45, 848 A.2d 27 (App. Div. 2004).
Motion to open judgment
U.S.—*F.D.I.C. v. Deglau*, 207 F.3d 153 (3d Cir. 2000).
Pa.—*Dollar Bank, Federal Sav. Bank v. Northwood Cheese Co., Inc.*, 431 Pa. Super. 541, 637 A.2d 309 (1994).
- 8 U.S.—*Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250 (3d Cir. 1994).

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16D C.J.S. Constitutional Law § 1985

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

8. Judgments

a. In General

§ 1985. Default judgment

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4008 to 4015, 4386, 4387

Although procedures relating to default judgments generally do not violate due process, the inherent power of courts to enter a default judgment is limited by the requirements of due process.

Generally, procedures prescribed by statute or rule governing default judgments do not violate due process,¹ but the inherent power of courts to enter a default judgment to insure the orderly administration of justice and the integrity of their orders is limited by the requirements of due process.² Due process permits the entry of a default judgment against a defendant who, after proper service, fails to answer within the time allowed,³ fails to make a timely appearance after adequate notice,⁴ or unjustifiably violates some procedural rule that affects the orderly adjudication of cases.⁵ For this purpose, the conduct of the defendant's attorney and insurer may be attributed to the defendant without denying due process.⁶ Although the rules of civil procedure governing default judgments state the due process expectations of a defendant, and a presumption arises that a due process violation has occurred if the notice provisions of the rule are not followed,⁷ which renders the judgment void,⁸ there

is no violation if the defaulting party was aware of the proceedings and had a sufficient opportunity to be heard.⁹ A default judgment violates the defendant's due process rights if it is entered without proper proof of service of process in the action,¹⁰

Due process requires notice¹¹ and an opportunity to attend and present the claim or defense,¹² especially if the case was disputed.¹³ A party is entitled to due process before entry of a judgment by default regardless of the merits of the claim or defense,¹⁴ and due process is violated if a default judgment is entered when the plaintiff has not established a prima facie case.¹⁵ Entry of a postanswer default judgment against a defendant who did not receive notice of the trial setting or a dispositive hearing constitutes a denial of due process.¹⁶ However, a party that is defaulted for failing to appear is not entitled under due process to any further notice of the proceedings.¹⁷

A defendant is not denied due process by the entry of a default judgment even though counterclaims still remain to be litigated.¹⁸ In any event, due process is not offended if testimony was taken supporting the plaintiff's case.¹⁹

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Footnotes

- 1 Ariz.—*Hanson v. Maryland Nat. Ins. Co.*, 5 Ariz. App. 122, 423 P.2d 737 (1967).
- 2 U.S.—*Phoceene Sous-Marine, S. A. v. U.S. Phosmarine, Inc.*, 682 F.2d 802, 34 Fed. R. Serv. 2d 951 (9th Cir. 1982).
Wis.—*Hauer v. Christon*, 43 Wis. 2d 147, 168 N.W.2d 81 (1969).
- 3 U.S.—*Central Operating Co. v. Utility Workers of America, AFL-CIO*, 491 F.2d 245, 18 Fed. R. Serv. 2d 365, 23 A.L.R. Fed. 936 (4th Cir. 1974).
Alaska—*Kennecorp Mortg. & Equities, Inc. v. First Nat. Bank of Fairbanks*, 685 P.2d 1232 (Alaska 1984).
Wash.—*Conner v. Universal Utilities*, 105 Wash. 2d 168, 712 P.2d 849 (1986).
Wyo.—*DMM v. DFH*, 954 P.2d 976 (Wyo. 1998).
- 4 U.S.—*Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971); *A. Bauer Mechanical, Inc. v. Joint Arbitration Bd. of Plumbing Contractors' Ass'n and Chicago Journeymen Plumbers' Local Union 130, U.A.*, 562 F.3d 784 (7th Cir. 2009).
Va.—*Blinder, Robinson & Co., Inc. v. State Corp. Com'n*, 227 Va. 24, 313 S.E.2d 652 (1984).
- 5 Va.—*Blinder, Robinson & Co., Inc. v. State Corp. Com'n*, 227 Va. 24, 313 S.E.2d 652 (1984).
Failure to answer interrogatories and attend pretrial conference
N.H.—*Cole v. Hobson*, 143 N.H. 14, 719 A.2d 560 (1998).
Default judgment as a sanction for failure to comply with discovery orders, see § 1971.
- 6 Mo.—*Sprung v. Negwer Materials, Inc.*, 775 S.W.2d 97 (Mo. 1989).
- 7 Colo.—*First Nat. Bank of Telluride v. Fleisher*, 2 P.3d 706 (Colo. 2000).
- 8 Colo.—*First Nat. Bank of Telluride v. Fleisher*, 2 P.3d 706 (Colo. 2000).
Wyo.—*Ruwart v. Wagner*, 880 P.2d 586 (Wyo. 1994).
- 9 Colo.—*First Nat. Bank of Telluride v. Fleisher*, 2 P.3d 706 (Colo. 2000).
- 10 La.—*In re Justice of Peace Landry*, 789 So. 2d 1271 (La. 2001).
Mont.—*In re Marriage of Shikany*, 268 Mont. 493, 887 P.2d 153 (1994).
- 11 Fla.—*M.W. v. SPCP Group V, LLC*, 2015 WL 445369 (Fla. 3d DCA 2015).
- 12 U.S.—*Sonus Corp. v. Matsushita Elec. Industrial Co., Ltd.*, 61 F.R.D. 644, 18 Fed. R. Serv. 2d 354 (D. Mass. 1974).
Ariz.—*McClintock v. Serv-Us Bakers*, 103 Ariz. 72, 436 P.2d 891 (1968).
Colo.—*First Nat. Bank of Telluride v. Fleisher*, 2 P.3d 706 (Colo. 2000).
Mich.—*Vaillencourt v. Vaillencourt*, 93 Mich. App. 344, 287 N.W.2d 230 (1979).
Actual or constructive notice
An out-of-state defendant who did not receive actual or constructive notice of a hearing on the plaintiff's motion for a default judgment, which was dispositive of the case, was denied due process.

Tex.—*LBL Oil Co. v. International Power Services, Inc.*, 777 S.W.2d 390 (Tex. 1989).

Notice of order of default sufficient

Me.—*Michaud v. Mutual Fire, Marine & Inland Ins. Co.*, 505 A.2d 786 (Me. 1986).

N.M.—*Daniels Ins. Agency, Inc. v. Jordan*, 1984-NMSC-116, 102 N.M. 162, 692 P.2d 1311 (1984).

Mich.—*Petroff v. Petroff*, 88 Mich. App. 18, 276 N.W.2d 503 (1979).

La.—*In re Justice of Peace Landry*, 789 So. 2d 1271 (La. 2001).

Tex.—*Mabon Ltd. v. Afri-Carib Enterprises, Inc.*, 369 S.W.3d 809 (Tex. 2012).

Md.—*Kaplan v. Bach*, 36 Md. App. 152, 373 A.2d 71 (1977).

Tenn.—*Commerce Union Bank v. Inquipco, Inc.*, 515 S.W.2d 651 (Tenn. Ct. App. 1973).

Wash.—*R.R. Gable, Inc. v. Burrows*, 32 Wash. App. 749, 649 P.2d 177 (Div. 1 1982).

Wyo.—*DMM v. DFH*, 954 P.2d 976 (Wyo. 1998).

U.S.—*Davis v. Fendler*, 650 F.2d 1154, 31 Fed. R. Serv. 2d 1584 (9th Cir. 1981).

Minn.—*In re Welfare of L.W.*, 644 N.W.2d 796 (Minn. 2002) (default judgment terminating parental rights).

Proof presented of defaulting defendant's misappropriations

Haw.—*Ramil v. Keller*, 68 Haw. 608, 726 P.2d 254 (1986).

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

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8. Judgments

a. In General

§ 1986. Default judgment—Damages

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4008 to 4015, 4386, 4387

The award of a default judgment in violation of a rule of civil procedure that a judgment by default cannot be "different in kind from or exceed in amount that prayed for in the demand for judgment" implicates the defendant's right to due process, and if a court awards relief that is other than or additional to what was requested in the complaint, a defaulting defendant is denied due process unless given notice and an opportunity to be heard.

The award of a default judgment in violation of a rule of civil procedure that a judgment by default cannot be "different in kind from or exceed in amount that prayed for in the demand for judgment" implicates the defendant's right to due process,¹ and if a court awards relief that is other than or additional to what was requested in the complaint, a defaulting defendant is denied due process unless given notice and an opportunity to be heard.² Due process allows the entry of a default judgment without further notice to a properly served defendant if the judgment cannot exceed the demand in the complaint,³ and a defaulting defendant is not denied due process on the theory that a default judgment exceeded the demand so long as the plaintiffs properly prayed for monetary damages in an amount to be proven at trial and that was precisely what they received.⁴ Although the trial court

may award liquidated damages without notice following a default, it is fundamental error for the court to award unliquidated damages without providing the notice required by due process and without requiring proof of damages.⁵ Upon finding a default judgment rendered in violation of a defaulting party's due process rights void, that judgment may not remain in effect during a trial on the underlying merits because, from the beginning, it had no legal force.⁶

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Footnotes

- 1 Haw.—[In re Genesys Data Technologies, Inc.](#), 95 Haw. 33, 18 P.3d 895 (2001).
- 2 Wash.—[Conner v. Universal Utilities](#), 105 Wash. 2d 168, 712 P.2d 849 (1986).
Child support
A trial court could not, as a matter of due process, order a husband to pay any child support in a default dissolution case as the wife had not specifically requested support in her petition for dissolution of marriage. Cal.—[In re Marriage of Lippel](#), 51 Cal. 3d 1160, 276 Cal. Rptr. 290, 801 P.2d 1041, 5 A.L.R.5th 1156 (1990).
Guardian
Due process requires that persons sued as guardians be notified that they were subject to personal liability before a default judgment could be entered against them in their individual capacity. Mont.—[Breuer v. Poe](#), 245 Mont. 22, 797 P.2d 944 (1990).
- 3 Wash.—[Conner v. Universal Utilities](#), 105 Wash. 2d 168, 712 P.2d 849 (1986).
- 4 Wash.—[Conner v. Universal Utilities](#), 105 Wash. 2d 168, 712 P.2d 849 (1986).
Complaint provided notice
A default judgment on a complaint requesting general, special, treble, and punitive damages "in an amount to be determined at trial" does not violate the defendant's due process rights where the complaint notified the defendant that it was at risk of suffering a substantial loss, and the defendant received notice after the entry of the default, but before the entry of the default judgment, of the specific itemized damages sought, had an opportunity to challenge the specific damages requested or to move to set aside the default and could have brought a timely motion to vacate the judgment. Haw.—[In re Genesys Data Technologies, Inc.](#), 95 Haw. 33, 18 P.3d 895 (2001).
- 5 Fla.—[Sarasota Estate & Jewelry Buyers, Inc. v. Joseph Gad, Inc.](#), 25 So. 3d 619 (Fla. 2d DCA 2009).
- 6 Colo.—[First Nat. Bank of Telluride v. Fleisher](#), 2 P.3d 706 (Colo. 2000).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

8. Judgments

a. In General

§ 1987. Preclusion by judgment

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West's Key Number Digest

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It is a violation of due process for a judgment to be binding on a litigant who was neither a party nor a privy to an earlier suit and therefore did not have an opportunity to be heard.

There is no due process right to have res judicata applied in every possible case.¹ However, it is a violation of due process for a judgment to be binding on a litigant who was neither a party nor a privy to an earlier suit and therefore did not have an opportunity to be heard.² Thus, as a matter of due process, a judgment may only bind actual parties to a case or those in privity with them.³ Strict mutuality of parties is no longer a prerequisite to estopping the relitigation of issues so long as the party against whom the doctrine is asserted was a party or in privity with a party in the first action.⁴ However, in the absence of privity, due process requires that one who has not had a day in court not be barred by a prior adjudication.⁵ The person must have had a day in court either as a party to a prior suit or as a privy and, if not a direct participant, it is required that at least the presently asserted interest was adequately represented in the prior proceeding.⁶

Due process prohibits applying collateral estoppel to one who has never appeared or had a chance to litigate the issue in a prior action.⁷ Thus, any person against whom collateral estoppel is asserted must have had a prior opportunity to contest the issue.⁸

Since due process does not grant the right to litigate the same question twice,⁹ it does not require a new hearing on matters that are res judicata.¹⁰ However, due process requires that a party asserting collateral estoppel prove that the identical issue was actually litigated, directly determined, and essential to the prior judgment,¹¹ or could have properly been litigated in that action.¹²

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Footnotes

- 1 Cal.—*Lowe v. Superior Court*, 175 Cal. Rptr. 3d 253 (Cal. App. 3d Dist. 2014).
- 2 U.S.—*Richards v. Jefferson County, Ala.*, 517 U.S. 793, 116 S. Ct. 1761, 135 L. Ed. 2d 76 (1996); *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 99 S. Ct. 645, 58 L. Ed. 2d 552, 26 Fed. R. Serv. 2d 669 (1979); *Hansberry v. Lee*, 311 U.S. 32, 61 S. Ct. 115, 85 L. Ed. 22, 132 A.L.R. 741 (1940).
Iowa—*Harris v. Jones*, 471 N.W.2d 818 (Iowa 1991).
Neb.—*Gottsch v. Bank of Stapleton*, 235 Neb. 816, 458 N.W.2d 443, 14 U.C.C. Rep. Serv. 2d 150 (1990).
Privity of father and son
A father, who was not made a defendant in an action arising out of a collision between a motorcycle and an automobile driven by his minor son, in which the family-purpose doctrine applied, was not bound by a judgment against his son in a later action by the motorcyclist for a deficiency since the son was not in privity with his father; due process required that the father, who denied negligence, have his day in court.
Ga.—*Land v. Sellers*, 150 Ga. App. 83, 256 S.E.2d 629 (1979).
Privity requirements with respect to preclusion by judgment, generally, see C.J.S., *Judgments* § 1099.
- 3 Ill.—*Zurich Ins. Co. v. Baxter Intern., Inc.*, 173 Ill. 2d 235, 218 Ill. Dec. 942, 670 N.E.2d 664 (1996).
State provisions implicated
An erroneous dismissal on the basis of claim preclusion violated both a state due process clause and an open-courts provision.
Utah—*Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, 44 P.3d 663 (Utah 2002).
- 4 Tex.—*Sysco Food Services, Inc. v. Trapnell*, 890 S.W.2d 796 (Tex. 1994).
Third-party estoppel
In an action by public entities to recover damages allegedly sustained as a result of its gross negligence that caused a city-wide blackout, application of third-party issue preclusion did not deprive an electric utility of due process since the utility was afforded a full and fair opportunity to litigate the issue of its gross negligence in a prior action brought by a private customer.
N.Y.—*Koch v. Consolidated Edison Co. of New York, Inc.*, 62 N.Y.2d 548, 479 N.Y.S.2d 163, 468 N.E.2d 1 (1984).
Mutuality requirements, generally, see C.J.S., *Judgments* § 1097.
- 5 Ga.—*Norris v. Atlanta & West Point R. Co.*, 254 Ga. 684, 333 S.E.2d 835 (1985).
- 6 Alaska—*Adams v. Pipeliners Union* 798, 699 P.2d 343 (Alaska 1985).
Cal.—*Clemmer v. Hartford Insurance Co.*, 22 Cal. 3d 865, 151 Cal. Rptr. 285, 587 P.2d 1098 (1978).
Neb.—*Borland v. Gillespie*, 206 Neb. 191, 292 N.W.2d 26 (1980).
Tex.—*Benson v. Wanda Petroleum Co.*, 468 S.W.2d 361 (Tex. 1971).
- 7 U.S.—*Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 91 S. Ct. 1434, 28 L. Ed. 2d 788 (1971).
Claim must have been fully and fairly litigated
Md.—*Cassidy v. Board of Educ. of Prince George's County*, 316 Md. 50, 557 A.2d 227, 53 Ed. Law Rep. 528 (1989).
- 8 W. Va.—*Stillwell v. City of Wheeling*, 210 W. Va. 599, 558 S.E.2d 598 (2001).
Wis.—*Paige K.B. ex rel. Peterson v. Steven G.B.*, 226 Wis. 2d 210, 594 N.W.2d 370 (1999).
Contractor's opportunity to defend

The due process rights of a highway construction contractor and its surety were not violated, in the highway department's action against them for indemnification for damages awarded to a second contractor, by the preclusive effect given to a judgment against the highway department even though these entities were not parties to—and did not appear in—the prior action, as they were given reasonable notice by the highway department of the original claim and an opportunity to defend but failed to do so.

W. Va.—[VanKirk v. Green Const. Co.](#), 195 W. Va. 714, 466 S.E.2d 782 (1995).

9 U.S.—[Sherrer v. Sherrer](#), 334 U.S. 343, 68 S. Ct. 1087, 92 L. Ed. 1429, 1 A.L.R.2d 1355 (1948); [Baldwin v. Iowa State Traveling Men's Ass'n](#), 283 U.S. 522, 51 S. Ct. 517, 75 L. Ed. 1244 (1931).

10 Mont.—[Matter of Estate of Counts](#), 217 Mont. 350, 704 P.2d 1052 (1985).

11 Ohio—[Buckeye Union Ins. Co. v. New England Ins. Co.](#), 87 Ohio St. 3d 280, 1999-Ohio-67, 720 N.E.2d 495 (1999).

12 Md.—[Grey v. Allstate Ins. Co.](#), 363 Md. 445, 769 A.2d 891 (2001).

The scope of the estoppel, generally, see [C.J.S., Judgments §§ 1058 et seq.](#)

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16D C.J.S. Constitutional Law § 1988

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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§ 1988. Preclusion by judgment—Relationship of parties

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West's Key Number Digest

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If the party to be bound in a second proceeding is different from the party against whom the original adjudication was made, due process requires a close relationship between them.

If the party to be bound in a second proceeding is different from the party against whom the original adjudication was made, due process requires a close relationship between them.

If the party to be bound in a second proceeding is different from the party against whom the original adjudication was made, due process requires a close relationship between them.¹ Since an elastic construal of privity for res judicata purposes violates due process,² due process bars applying preclusion when the relationship between the party and nonparty becomes too attenuated.³ If a litigant is not so closely aligned with a party in the prior proceeding as to represent the same legal interest, or the litigant's interests cannot be deemed to have been litigated in the prior proceeding, then the litigant's due process rights would be violated if the court were to apply a doctrine of issue preclusion.⁴ On the other hand, if there is a sufficiently close relationship to

constitute privity between a party to a prior action and the party to be estopped in the later one, due process is not offended by the estoppel if the former party had a full and fair opportunity to litigate the matter.⁵

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Footnotes

- 1 U.S.—[Bruszewski v. U.S.](#), 181 F.2d 419 (3d Cir. 1950).
- 2 Ala.—[Morris v. Cornerstone Propane Partners, L.P.](#), 884 So. 2d 796 (Ala. 2003).
- 3 U.S.—[Southwest Airlines Co. v. Texas Intern. Airlines, Inc.](#), 546 F.2d 84 (5th Cir. 1977).
Utah—[Brigham Young University v. Tremco Consultants, Inc.](#), 2005 UT 19, 110 P.3d 678, 197 Ed. Law Rep. 835 (Utah 2005) (overruled on other grounds by, [Madsen v. JPMorgan Chase Bank, N.A.](#), 2012 UT 51, 296 P.3d 671 (Utah 2012)).
- 4 Wis.—[Paige K.B. ex rel. Peterson v. Steven G.B.](#), 226 Wis. 2d 210, 594 N.W.2d 370 (1999).
- 5 N.C.—[Whitacre Partnership v. Biosignia, Inc.](#), 358 N.C. 1, 591 S.E.2d 870 (2004).

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16D C.J.S. Constitutional Law § 1989

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

8. Judgments

a. In General

§ 1989. Modifying or vacating judgment

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4008 to 4015

The courts may amend or vacate a judgment without violating due process.

Ordinarily, a judgment may not be modified by legislative action since a judgment is a form of contract protected by the due process guarantees of the federal and state constitutions.¹ However, the courts may vacate a judgment without violating due process.² A court has no discretion to deny a motion to vacate a judgment if jurisdiction was in fact lacking since the judgment cannot stand without denying due process to the defendant.³

The requirements of due process must be followed in modifying⁴ or vacating a judgment.⁵ Thus, notice and an opportunity to be heard is ordinarily required before a judgment is modified⁶ or vacated.⁷ Furthermore, the amendment of a judgment—resulting in the imposition of personal liability on a person who was not a party—violates due process if that person was given no opportunity to defend.⁸ However, due process is not denied merely because no hearing was held on a motion for relief from

a judgment of dismissal for want of prosecution, if the movant did not comply with rules governing the right to obtain oral argument on a motion.⁹

Correction of errors.

Due process requires that the correction of errors inadvertently made by a trial court be done upon the motion of the party aggrieved or upon the court's own motion with notice and an opportunity for the parties to be heard.¹⁰ The amendment of a judgment pursuant to such a motion does not result in a denial of due process.¹¹ The correction of a clerical error in a judgment, out of the presence of counsel, does not constitute a denial of due process if the parties had knowledge of the error.¹²

Relief from default judgment.

In some circumstances, relief from a default is an integral part of due process,¹³ and consistent with due process, a court acting within its jurisdiction and observing the customary legal requirements may set aside a default judgment¹⁴ for mistake, inadvertence, surprise, or excusable neglect.¹⁵ However, an ex parte order setting aside a default judgment violates due process.¹⁶ Similarly, the modification of a default judgment at a hearing on the judgment debtors' claims for exemption from execution and garnishment violates the creditors' due process rights if they did not receive adequate notice suggesting that the judgment would be amended.¹⁷

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Footnotes

- 1 Cal.—*Caminetti v. Pacific Mut. Life Ins. Co. of Cal.*, 22 Cal. 2d 344, 139 P.2d 908 (1943).
- 2 Nev.—*Schultz v. King*, 68 Nev. 207, 228 P.2d 401 (1951).
- 3 Utah—*Jackson Const. Co., Inc. v. Marrs*, 2004 UT 89, 100 P.3d 1211 (Utah 2004).
The judgment being void for this reason, see § 1982.
- 4 Conn.—*Costello v. Costello*, 186 Conn. 773, 443 A.2d 1282 (1982).
Mo.—*Ex parte Messina*, 233 Mo. App. 1234, 128 S.W.2d 1082 (1939).
Wyo.—*Barker Bros., Inc. v. Barker-Taylor*, 823 P.2d 1204 (Wyo. 1992).
- 5 Cal.—*Metropolitan Water Dist., of Southern California v. Adams*, 19 Cal. 2d 463, 122 P.2d 257 (1942).
Idaho—*Curtis v. Siebrand Bros. Circus & Carnival Co.*, 68 Idaho 285, 194 P.2d 281 (1948).
Mo.—*In re Marriage of Eden*, 621 S.W.2d 331 (Mo. Ct. App. S.D. 1981).
Granting affirmative relief
The authority to grant affirmative relief under a rule providing for vacation of judgments for fraud does not mean that a court may circumvent due process and award damages or make findings without an evidentiary trial on the merits.
U.S.—*Conerly v. Flower*, 410 F.2d 941, 13 Fed. R. Serv. 2d 1295 (8th Cir. 1969).
- 6 Ky.—*Ohio River Pipeline Corp. v. Landrum*, 580 S.W.2d 713 (Ky. Ct. App. 1979).
Mo.—*Kipper v. Vokolek*, 546 S.W.2d 521 (Mo. Ct. App. 1977).
Okla.—*Steincamp v. Steincamp*, 1979 OK 51, 593 P.2d 495 (Okla. 1979).
- 7 Md.—*Accrocco v. Splawn*, 264 Md. 527, 287 A.2d 275 (1972).
Mass.—*White v. Hultgren*, 357 Mass. 36, 255 N.E.2d 791 (1970).
Mistake or duress
Due process requires an evidentiary hearing if a defendant's motion to open a stipulated judgment that was grounded on mistake or duress necessarily requires that a court make a factual determination.
Conn.—*Housing Authority of City of Stamford v. Lamothe*, 225 Conn. 757, 627 A.2d 367 (1993).
Notice and opportunity for hearing afforded
Ala.—*Shaffer v. Reed*, 456 So. 2d 1082 (Ala. 1984).

- 8 U.S.—*Nelson v. Adams USA, Inc.*, 529 U.S. 460, 120 S. Ct. 1579, 146 L. Ed. 2d 530, 46 Fed. R. Serv. 3d 1 (2000).
- 9 Alaska—*Cleary Diving Service, Inc. v. Thomas, Head and Greisen*, 688 P.2d 940 (Alaska 1984).
- 10 S.D.—*Unzicker v. Unzicker*, 270 N.W.2d 41 (S.D. 1978).
- 11 Ind.—*Wireman v. Wireman*, 168 Ind. App. 295, 343 N.E.2d 292 (1976).
- Waiver of defenses**
A failure to hold a hearing on a motion to correct a consent judgment did not deny due process since the party had appeared and waived defenses relating to the subject matter of that judgment.
- R.I.—*O'Hearn v. O'Hearn*, 506 A.2d 78 (R.I. 1986).
- 12 Ariz.—*Mori v. Mori*, 124 Ariz. 193, 603 P.2d 85 (1979).
- A.L.R. Library**
Amendment of record of judgment in state civil case to correct judicial errors and omissions, 50 A.L.R.5th 653
- 13 Cal.—*People v. One 1950 Mercury Sedan, Engine No. 50LA40896M, 1950 License No. 29B9130*, 116 Cal. App. 2d 746, 254 P.2d 666 (2d Dist. 1953) (overruled in part on other grounds by, *People v. One 1948 Chevrolet Convertible Coupe*, 45 Cal. 2d 613, 290 P.2d 538, 55 A.L.R.2d 1272 (1955)).
- 14 Mo.—*State ex rel. Stoffer v. Moore*, 628 S.W.2d 637 (Mo. 1982).
- Nev.—*Schultz v. King*, 68 Nev. 207, 228 P.2d 401 (1951).
- 15 Nev.—*Schultz v. King*, 68 Nev. 207, 228 P.2d 401 (1951).
- 16 Ga.—*Apex Supply Co., Inc. v. Johnny Long Homes, Inc.*, 143 Ga. App. 699, 240 S.E.2d 171 (1977).
- 17 Wyo.—*Barker Bros., Inc. v. Barker-Taylor*, 823 P.2d 1204 (Wyo. 1992).

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16D C.J.S. Constitutional Law § 1990

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

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a. In General

§ 1990. Modifying or vacating judgment—Domestic relations

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If personal jurisdiction over a spouse is obtained before the original divorce decree is granted, due process dictates that reasonable notice must be given to an absent party in later proceedings that seek to modify awards of support.

If personal jurisdiction over a spouse is obtained before the original divorce decree is granted, due process dictates that reasonable notice must be given to an absent party in later proceedings that seek to modify awards of support.¹ Furthermore, a trial court acts in a manner inconsistent with due process and fair play by modifying a spousal-support obligation sua sponte in the absence of a petition to modify a support judgment or, at the least, an oral request seeking a modification.² Due process is not violated, however, by an order that—upon reasonable constructive service on a nonresident spouse—modifies a previous judgment rendered in a matrimonial action in which the court had jurisdiction over the person of that spouse.³ However, due process is violated if the former spouse was given insufficient notice of the date and time of the hearing.⁴ It violates due process to modify a divorce decree with respect to an issue that was neither presented by the pleadings nor litigated by the parties.⁵

However, sufficient notice that a modification of visitation is sought may be provided by an affidavit filed in response to the other former spouse's petition to enforce the existing visitation provision.⁶

Barring a father from seeking a modification of child support and custody for failure to pay child support constitutes a denial of due process.⁷ An indication to the child, during an in chambers interview, of the court's intention to modify custody, after the court had heard testimony from both sides, did not violate due process since this disclosure was important to the purpose of preparing the child for a change.⁸ A trial court's finding that a child would be in jeopardy if placed in the parent's custody violates due process in a child-protection hearing if the agency never alleged or argued the point, and the parent was therefore not on notice that a defense against the allegation was needed.⁹

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Footnotes

- 1 Del.—*Sevison v. Sevison*, 396 A.2d 178 (Del. Super. Ct. 1978).
Fla.—*West v. West*, 301 So. 2d 823 (Fla. 2d DCA 1974).
Vt.—*Brown v. Brown*, 154 Vt. 625, 580 A.2d 975 (1990).
W. Va.—*Crone v. Crone*, 180 W. Va. 184, 375 S.E.2d 816 (1988).
Wyo.—*Bjugan v. Bjugan*, 710 P.2d 213 (Wyo. 1985).
- 2 Ala.—*Henderson v. Henderson*, 73 So. 3d 1282 (Ala. Civ. App. 2011).
- 3 Del.—*Sevison v. Sevison*, 396 A.2d 178 (Del. Super. Ct. 1978).
- 4 Miss.—*Powell v. Powell*, 644 So. 2d 269 (Miss. 1994).
- 5 Fla.—*Brady v. Jones*, 491 So. 2d 1272 (Fla. 2d DCA 1986) (visitation rights).
Contempt order requiring modification of amended final judgment
Fla.—*McNay v. de Lourdes McNay*, 559 So. 2d 1291 (Fla. 2d DCA 1990).
Alimony not mentioned in request for child support
Miss.—*Rhodes v. Rhodes*, 336 So. 2d 1315 (Miss. 1976).
Spouse's partnership interest
On a former husband's motion to modify a divorce decree—which incorporated a stipulation to divide the husband's partnership interest—contending that division could not be accomplished as stipulated due, inter alia, to the partners' nonacceptance of his offer to sell his interest to them and the partnership's refusal to comply with transfer of half his interest to the former wife, the trial court's consideration and findings regarding the assignability of the husband's interest under the terms of the partnership agreement and the husband's compliance with the dissolution decree violated due process; the husband's motion did not raise those issues and therefore the wife had no notice that assignability of the partnership interest and the husband's compliance with the dissolution decree were before the court for consideration, and the district court's findings should have been limited to whether the decree should be modified for fraud or gross inequity.
Neb.—*Whitesides v. Whitesides*, 290 Neb. 116, 858 N.W.2d 858 (2015).
- 6 Vt.—*Brown v. Brown*, 154 Vt. 625, 580 A.2d 975 (1990).
- 7 Okla.—*Carter v. Carter*, 1989 OK 153, 783 P.2d 969 (Okla. 1989).
- 8 Wyo.—*Yates v. Yates*, 702 P.2d 1252 (Wyo. 1985).
- 9 Me.—*In re Destiny T.*, 2009 ME 26, 965 A.2d 872 (Me. 2009).

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16D C.J.S. Constitutional Law § 1991

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

A. Civil Remedies and Proceedings

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b. Enforcement

§ 1991. Due process protections when enforcing or executing on judgments, generally

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4008 to 4015, 4386, 4387

Due process requirements must be followed when executing a judgment, but a postseizure hearing is usually sufficient after execution is issued.

Due process applies to postjudgment proceedings.¹ To comply with due process requirements, the procedure adopted for enforcing or executing on a judgment must preserve the essential rights of the parties.² A procedure may satisfy due process for execution in general and yet fail to satisfy procedural due process in every case,³ such as when funds derived from welfare benefits are claimed to be exempt.⁴

Due process ordinarily does not require notice and an opportunity to be heard before the issuance of an execution,⁵ garnishment,⁶ or writ of assistance,⁷ or the initiation of supplementary proceedings to reach property.⁸ Generally, due process is satisfied if a judgment debtor receives timely and adequate notice of the seizure, including information concerning applicable exemptions⁹

as well as the procedures for asserting them and a prompt postseizure hearing and adjudication of the exemption claims.¹⁰ To be constitutional, a statute need not prescribe a notice that supplies the debtor with a "laundry list" of statutory or constitutional exemptions or informs the debtor of all available exemptions.¹¹

Due process requires that the rights of third persons in the property subject to execution not be finally adjudicated unless those persons have been given an opportunity to present their claims.¹²

A judgment creditor has due process rights with regard to the debtor's motion to stay an execution or to allow a payment schedule.¹³ After a judgment is set aside, the judgment creditor is entitled, as a matter of due process, to a hearing on the disposition of the money paid under the execution, and to present defenses, before being required to refund that money.¹⁴

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Footnotes

- 1 Cal.—*Raigoza v. Sperl*, 34 Cal. App. 3d 560, 110 Cal. Rptr. 296 (2d Dist. 1973).
Ga.—*Coursin v. Harper*, 236 Ga. 729, 236 Ga. 854, 225 S.E.2d 428 (1976).
- 2 Ga.—*Bennett v. American Bank & Trust Co.*, 162 Ga. 718, 134 S.E. 781 (1926).
Ind.—*Brant v. Lincoln Nat. Life Ins. Co. of Fort Wayne*, 209 Ind. 268, 198 N.E. 785 (1935).
Ohio—*Chandler v. Horne*, 23 Ohio App. 1, 5 Ohio L. Abs. 3, 154 N.E. 748 (9th Dist. Summit County 1926).
Tenn.—*Life & Cas. Ins. Co. v. Clark*, 165 Tenn. 219, 54 S.W.2d 965 (1932).
- 3 Me.—*Yoder v. Cumberland County*, 278 A.2d 379 (Me. 1971).
- 4 U.S.—*Betts v. Tom*, 431 F. Supp. 1369 (D. Haw. 1977).
- 5 U.S.—*Finberg v. Sullivan*, 634 F.2d 50, 30 Fed. R. Serv. 2d 691 (3d Cir. 1980), adhered to, 658 F.2d 93 (3d Cir. 1980); *Brown v. Liberty Loan Corp. of Duval*, 539 F.2d 1355 (5th Cir. 1976).
Wash.—*Casa del Rey v. Hart*, 31 Wash. App. 532, 643 P.2d 900 (Div. 1 1982).
On affidavit of intent to fraudulently convey
Ala.—*Ex parte Mid-Continent Systems, Inc.*, 470 So. 2d 677 (Ala. 1985).
Postjudgment hearing before executing on a confessed judgment, see § 1984.
- 6 U.S.—*Endicott-Johnson Corporation v. Encyclopedia Press*, 266 U.S. 285, 45 S. Ct. 61, 69 L. Ed. 288 (1924).
Cal.—*In re Marriage of Crookshanks*, 41 Cal. App. 3d 475, 116 Cal. Rptr. 10 (2d Dist. 1974).
Ind.—*Citizens Nat. Bank of Grant County v. Harvey*, 167 Ind. App. 582, 339 N.E.2d 604 (1976).
Due process considerations in garnishment proceedings, see § 1992.
- 7 Mont.—*Sadler v. Hart*, 220 Mont. 355, 715 P.2d 50 (1986).
- 8 U.S.—*Endicott-Johnson Corporation v. Encyclopedia Press*, 266 U.S. 285, 45 S. Ct. 61, 69 L. Ed. 288 (1924).
- 9 U.S.—*Finberg v. Sullivan*, 634 F.2d 50, 30 Fed. R. Serv. 2d 691 (3d Cir. 1980), adhered to, 658 F.2d 93 (3d Cir. 1980).
Ark.—*Duhon v. Gravett*, 302 Ark. 358, 790 S.W.2d 155 (1990).
Mont.—*Dorwart v. Caraway*, 1998 MT 191, 290 Mont. 196, 966 P.2d 1121 (1998) (overruled on other grounds by, *Trustees of Indiana University v. Buxbaum*, 2003 MT 97, 315 Mont. 210, 69 P.3d 663 (2003)).
Certified mail
Notice to the judgment debtor of the availability of exemption rights, sent by certified mail, return receipt requested, to the debtor's last known address, complies with the due process requirement that a judgment debtor be informed of exemption rights.
W. Va.—*Vanscoy v. Neal*, 174 W. Va. 53, 322 S.E.2d 37 (1984).
- 10 U.S.—*Finberg v. Sullivan*, 634 F.2d 50, 30 Fed. R. Serv. 2d 691 (3d Cir. 1980), adhered to, 658 F.2d 93 (3d Cir. 1980).
Inventory requirement
A statute providing that a debtor who wishes to claim property as exempt from a forced sale must make an inventory of all of his or her personal property within a given time from the date of the levy does not violate due process.

- 11 Fla.—[Johns v. May](#), 402 So. 2d 1166 (Fla. 1981).
12 Ark.—[Duhon v. Gravett](#), 302 Ark. 358, 790 S.W.2d 155 (1990).
13 Fla.—[General Guaranty Ins. Co. of Fla. v. DaCosta](#), 190 So. 2d 211 (Fla. 3d DCA 1966).
14 N.H.—[Quality Carpets, Inc. v. Carter](#), 133 N.H. 887, 587 A.2d 254 (1991) (requests were sufficient argued).
Ga.—[Lagerquist v. Thompson](#), 232 Ga. 878, 209 S.E.2d 208 (1974).

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16D C.J.S. Constitutional Law § 1992

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XXI. Civil Proceedings and Due Process; Administrative Proceedings

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§ 1992. Enforcing garnishment orders

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Due process demands that a writ furnish a garnishee with notice of its effect and an opportunity to be heard.

Due process demands that a writ furnish a garnishee with notice of its effect and an opportunity to be heard.¹ A writ that commands a garnishee's response, but fails to give any indication of the consequences of failing to do so, does not comply with the requirements of due process.² Due process requires notice to the judgment debtor of a summons issued to a third party who holds the debtor's property.³ Due process does not forbid the levy of an execution on property held in trust for the debtor under the terms of a trust created before the entry of the judgment,⁴ and the garnishment of property that a trustee holds under only a naked legal title does not deny the trustee due process.⁵

Wage garnishments.

The requirements of due process are met with regard to notice by a judgment creditor to the debtor of the right to contest a wage execution if the notice is reasonably calculated to provide the opportunity to present objections.⁶ Wage garnishment provisions violate due process if they provide inadequate notice of the legal limits placed on income executions and the availability of procedures to challenge them.⁷ Due process is also violated if the garnishment procedure does not provide a debtor with the opportunity to raise an objection that an exemption law was misapplied.⁸

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Footnotes

- 1 Md.—[Steed Mortg. Co. v. Arthur](#), 37 Md. App. 592, 378 A.2d 690 (1977).
Default judgment
Due process may require that notice be given to a garnishee before a default judgment is entered against it.
Okla.—[Hagar v. Goodyear Tire and Rubber Co.](#), 1993 OK 48, 853 P.2d 768 (Okla. 1993).
Garnishment of insurer
An order directing an insurer to deliver to the sheriff money it owed the judgment debtor violated due process in that it was issued without obtaining personal jurisdiction over the insurer and without giving it notice or an opportunity to be heard.
Ill.—[Hotpoint v. Granite City Furniture, Inc.](#), 76 Ill. App. 3d 1037, 32 Ill. Dec. 409, 395 N.E.2d 639 (5th Dist. 1979).
- 2 Ariz.—[Freeland v. Green](#), 123 Ariz. 526, 601 P.2d 289 (Ct. App. Div. 1 1978).
- 3 W. Va.—[Vanscoy v. Neal](#), 174 W. Va. 53, 322 S.E.2d 37 (1984).
- 4 N.Y.—[Brearley School v. Ward](#), 201 N.Y. 358, 94 N.E. 1001 (1911).
- 5 Ariz.—[Sackin v. Kersting](#), 105 Ariz. 566, 468 P.2d 925 (1970).
- 6 N.J.—[First Resolution Inv. Corp. v. Seker](#), 171 N.J. 502, 795 A.2d 868 (2002).
- 7 U.S.—[Deary v. Guardian Loan Co., Inc.](#), 534 F. Supp. 1178 (S.D. N.Y. 1982).
- 8 U.S.—[Neeley v. Century Finance Co. of Arizona](#), 606 F. Supp. 1453 (D. Ariz. 1985).

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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Due process requires that notice be given to the debtor if the language of the divorce decree contemplates the steps to be taken for entry of a judgment for accrued support payments.

Due process requires that notice be given to the debtor if the language of the divorce decree contemplates the steps to be taken for entry of a judgment for accrued support payments.¹ Furthermore, an ex-spouse's due process rights are violated by not being afforded the opportunity to answer and be heard on a request for implementation of a qualified domestic relations order (QDRO).² Although a closing argument can be waived, the opportunity to present a closing argument must at least be available to the parties to divorce proceedings in order to comply with due process.³ A hearing is required if the amount due under a marital dissolution judgment must be calculated based on facts outside the record.⁴

An execution to satisfy an alimony order meets the general requirements of due process if the procedures provide that an affidavit for execution be approved by a judge before the summons is issued, the judgment debtor receive timely notice of

the execution, and there be an early hearing on the debtor's challenge.⁵ A statutory requirement that alimony be paid through a child support enforcement agency does not violate due process since it is rationally related to the legitimate governmental interest in keeping orderly records of each support payment and eliminating litigation over compliance with support orders.⁶ Whether compliance with the constitutional right of procedural due process necessitates a preseizure hearing before execution may be levied to enforce a judgment for unpaid accrued installments may depend on state statutory procedures for perfecting an installment judgment.⁷

CUMULATIVE SUPPLEMENT

Cases:

Trial court conducting final hearing and entering final judgment after notice of hearing provided that it was a status conference violated wife's due process rights in marriage dissolution proceedings; trial court changed the nature and expanded the scope of the scheduled hearing without proper notice. [U.S.C.A. Const.Amend. 14. Shah v. Shah, 178 So. 3d 70 \(Fla. 3d DCA 2015\).](#)

Ex-husband's due process and privacy rights were not violated by trial court's order sustaining ex-wife's motion to compel, despite contention that order required him to sign an overly broad authorization for documents in violation of Health Insurance Portability and Accountability Act (HIPAA) and federal regulation; authorization restricted documents to be released to those that related to, or arose out of, military retirement points earned by ex-husband during marriage, which was relevant to ex-wife's share of ex-husband's military retirement benefits, and ex-husband did not articulate how HIPAA was violated. [U.S. Const. Amend. 14; 45 C.F.R. § 164.512\(e\). State ex rel. Cullen v. Harrell, 567 S.W.3d 633 \(Mo. 2019\).](#)

Trial court's alleged demand that husband's attorney divulge whether he was going to call husband as a witness in final hearing on property division in divorce action did not violate husband's due-process rights; the trial court, in an effort to save time, asked husband's attorney whether he would call husband on direct since, if husband was going to testify, then daughter, who had been substituted for wife and was administrator of wife's estate, could curtail her direct of husband, knowing that she would have an opportunity on cross-examination to ensure that she got all of the testimony that she wanted, but trial court did not compel husband's attorney to make or announce decision. [U.S. Const. Amend. 14. Matter of Sweatt, 173 A.3d 1080 \(N.H. 2017\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 Iowa—[Cullinan v. Cullinan, 226 N.W.2d 33 \(Iowa 1975\).](#)
Adequate notice of hearing provided
Wyo.—[Smith v. Robinson, 912 P.2d 527 \(Wyo. 1996\).](#)
- 2 Ala.—[Ex parte Montgomery, 79 So. 3d 660 \(Ala. Civ. App. 2011\).](#)
- 3 Fla.—[Julia v. Julia, 146 So. 3d 516 \(Fla. 4th DCA 2014\).](#)
- 4 Mont.—[In re Marriage of Nordberg, 271 Mont. 328, 896 P.2d 447 \(1995\).](#)
- 5 Ga.—[Antico v. Antico, 241 Ga. 294, 244 S.E.2d 820 \(1978\).](#)
- 6 Ohio—[Granzow v. Bureau of Support of Montgomery County, 54 Ohio St. 3d 35, 560 N.E.2d 1307 \(1990\).](#)
- 7 Cal.—[Wyshak v. Wyshak, 70 Cal. App. 3d 384, 138 Cal. Rptr. 811 \(2d Dist. 1977\).](#)

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

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§ 1994. Notice of sale

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4008 to 4015, 4386, 4387

Procedural due process, including proper notice to persons interested in the property and the public, must be given in connection with a sheriff's sale.

Procedural due process must be followed before property may be sold at a sheriff's sale.¹ Specifically, a judgment debtor must be given personal notice of an impending sale of property to satisfy an execution.² Due process requires that reasonable notice to the public of the sheriff's sale be given, so that a reasonable price may be obtained and may require that the court later review the sale to ensure that the process employed operated reasonably.³ Notice by publication to judgment creditors of an execution sale is satisfactory if "reasonably diligent effort" to ascertain their addresses is unsuccessful.⁴

A statute establishing the notice requirement for the execution sale of real property provides for sufficient notice to a third party real-property owner and affords such property owners a reasonable time to make an appearance.⁵ If the third party property owner is given notice as required by the statute, they have the opportunity to intervene in the action and assert their defenses.⁶

Although it has been held that due process requires that both those who purchase real property from judgment debtors and subsequent purchasers be given actual notice of a sheriff's sale when the names and addresses of those persons are known or are easily ascertainable,⁷ there is also authority that due process is satisfied by the mere filing of a notice of attachment, and any party acquiring an interest after that time takes the interest subject to the notice of attachment despite the lack of personal notice of the execution.⁸

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Footnotes

- 1 Okla.—[Cate v. Archon Oil Co., Inc.](#), 1985 OK 15, 695 P.2d 1352, 40 U.C.C. Rep. Serv. 1941 (Okla. 1985).
- 2 Nev.—[Swartz v. Adams](#), 93 Nev. 240, 563 P.2d 74 (1977).
Pa.—[Luskey v. Steffron, Inc.](#), 461 Pa. 305, 336 A.2d 298 (1975), on reh'g on other grounds, 469 Pa. 377, 366 A.2d 223 (1976).
- 3 Del.—[Deibler v. Atlantic Properties Group, Inc.](#), 652 A.2d 553 (Del. 1995).
- 4 N.J.—[New Brunswick Sav. Bank v. Markouski](#), 123 N.J. 402, 587 A.2d 1265 (1991).
- 5 Fla.—[Gamez v. First Union Nat. Bank of Florida](#), 31 So. 3d 220 (Fla. 4th DCA 2010).
- 6 Fla.—[Gamez v. First Union Nat. Bank of Florida](#), 31 So. 3d 220 (Fla. 4th DCA 2010).
- 7 Ariz.—[Mason v. Wilson](#), 116 Ariz. 255, 568 P.2d 1153 (Ct. App. Div. 1 1977).
- 8 N.D.—[Texaro Oil Co. v. Mosser](#), 299 N.W.2d 191 (N.D. 1980).

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§ 1995. Seizure and imprisonment for failing to satisfy civil judgment ("body execution")

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West's Key Number Digest, [Constitutional Law](#)  4008 to 4015, 4386, 4387

In the absence of establishing a compelling state interest or an extraordinary situation necessitating the summary deprivation of liberty, a statute or judgment authorizing the summary arrest and incarceration of a person without a hearing, solely for failing to satisfy, in whole or in part, a civil judgment, without providing a hearing, is void as denying procedural due process.

Heightened due process requirements apply to body executions, considering the liberty interest involved.¹ Thus, in the absence of establishing a compelling state interest or an extraordinary situation necessitating the summary deprivation of liberty,² a statute or judgment authorizing the summary arrest and incarceration of a person without providing a hearing, solely for failing to satisfy, in whole or in part, a civil judgment is void as denying procedural due process.³

At a minimum, due process requires that notice and an opportunity to be heard be given a judgment debtor prior to the issuance of a body execution, and the fact that the judgment debtor may be entitled to a postincarceration hearing will not cure the defect.⁴

Although notice by mail, before the issuance of an arrest warrant to the judgment debtor, may be sufficient,⁵ the notice must be reasonably calculated to apprise the judgment debtor of the pendency of the motion for the issuance of the execution, and of the opportunity to present objections.⁶ At the hearing on the issuance of the body execution, after the judgment debtor has been given due notice and has counsel, it is not a violation of due process to place on the debtor the burden of proving a lack of funds to pay the judgment.⁷

Procedural due process is not violated by statutes conditioning discharge from civil arrest on the judgment debtor's making a full accounting of all of his or her property, supported by an oath that the debtor has not made a fraudulent transfer.⁸ A judgment debtor who is arrested for failing to obey a subpoena to appear and be examined at a disclosure hearing is entitled to due process,⁹ including the right to be brought before the court without unreasonable delay, the right to bail, and the right to move for a hearing on the grounds for the arrest.¹⁰ Therefore, a statute that permits a judgment debtor who has failed to obey a subpoena for his or her appearance and examination to be arrested and incarcerated without a prior hearing violates due process.¹¹ A body attachment does not deny due process if there is an existing order finding the person in contempt of court for failing to pay alimony arrearages and ordering that person's confinement until the contempt is purged.¹²

CUMULATIVE SUPPLEMENT

Cases:

District of Columbia Medicaid recipients had property interests, protected by the due process clause, in coverage of prescription drugs not completely excluded from Medicaid coverage; District's Medicaid regulations provided for prescription drug coverage use in mandatory, non-discretionary terms, and District did not argue that it retained discretion to deny claims for covered prescription drugs upon satisfaction of all eligibility criteria. [U.S.C.A. Const.Amend. 5](#); [Social Security Act, § 1901](#), [42 U.S.C.A. § 1396](#); [D.C. Mun.Reg. tit. 29, § 2703.1](#). [NB ex rel. Peacock v. District of Columbia](#), 794 F.3d 31 (D.C. Cir. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 Me.—[Yoder v. Cumberland County](#), 278 A.2d 379 (Me. 1971).
Further findings
Procedural due process in the enforcement of a postjudgment execution by an order of arrest requires not only findings with respect to the debtor's wrong against the creditor but also a finding of probable cause to believe that the debtor has committed or will commit further wrongs to cheat creditors.
- 2 N.C.—[Windham Distributing Co., Inc. v. Davis](#), 72 N.C. App. 179, 323 S.E.2d 506 (1984).
- 3 Me.—[Yoder v. Cumberland County](#), 278 A.2d 379 (Me. 1971).
- 4 Miss.—[Taylor v. Taylor](#), 348 So. 2d 1341 (Miss. 1977).
- 5 R.I.—[Mills v. Howard](#), 109 R.I. 25, 280 A.2d 101 (1971).
- 6 R.I.—[Mills v. Howard](#), 109 R.I. 25, 280 A.2d 101 (1971).
- 7 N.J.—[New Century Financial Services, Inc. v. Nason](#), 367 N.J. Super. 17, 842 A.2d 179 (App. Div. 2004).
- 8 R.I.—[Mills v. Howard](#), 109 R.I. 25, 280 A.2d 101 (1971).
- 9 Conn.—[Palumbo v. Manson](#), 35 Conn. Supp. 130, 400 A.2d 288 (Super. Ct. 1979).
- U.S.—[Carter v. Lynch](#), 429 F.2d 154 (4th Cir. 1970).
- N.H.—[Mason Furniture Corp. v. George](#), 116 N.H. 451, 362 A.2d 188 (1976).

- 10 N.H.—[Mason Furniture Corp. v. George](#), 116 N.H. 451, 362 A.2d 188 (1976).
11 U.S.—[Desmond v. Hachey](#), 315 F. Supp. 328 (D. Me. 1970).
12 U.S.—[Donlan v. Smith](#), 662 F. Supp. 352 (D. Md. 1986), judgment [aff'd](#), 820 F.2d 1219 (4th Cir. 1987).

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§ 1996. Recognition of foreign judgments

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4008 to 4015, 4386, 4387

Proceedings in a foreign jurisdiction must have complied with due process requirements before the judgment may be recognized, either as a matter of comity or under the Full Faith and Credit Clause.

Due process requires that no jurisdiction may give effect, even as a matter of comity, to a judgment acquired elsewhere, if due process requirements were not met in the foreign jurisdiction.¹ Foreign judgments may be enforced without violating due process, provided that the foreign court had jurisdiction or the question of jurisdiction was concluded by the judgment,² because the question of jurisdiction adjudicated in the original case could not be reopened.³ Under due process, a foreign judgment is subject to collateral attack if the foreign court lacked jurisdiction over the subject matter or person.⁴ In determining whether the foreign court had jurisdiction, the foreign state's law, as constrained by due process, controls.⁵ Similarly, the question whether a foreign court complied with due process requirements before rendering a default judgment is determined in accordance with the foreign state's rules of procedure.⁶

The Full Faith And Credit Clause⁷ is harmonious with the due process,⁸ and the fact that the former may prevent the enforcement of a void judgment does not provide a reason for not also recognizing that due process does not permit the entry of a judgment that is void for want of due process.⁹ Therefore, a state-court judgment will not be given full faith and credit if the effect would be to deprive a person of rights without due process.¹⁰ Conversely, full faith and credit will be given to a judgment if the defendant had been given notice and an opportunity to be heard in the court proceeding in the other state.¹¹

Statutes, such as the Uniform Enforcement of Foreign Judgments Act,¹² providing for the enforcement of foreign judgments without providing for notice and a hearing, do not violate due process since the basic requirement of a right to a hearing is met in the court that rendered the original judgment,¹³ and a postjudgment attachment of property in one state satisfies due process standards if a court of competent jurisdiction in another state has determined the existence of the debt.¹⁴ Due process is afforded if a hearing is held on the enforceability of a foreign default judgment.¹⁵

Due process requires that a party against whom the enforcement of a foreign modifiable order is sought be given the same opportunity to litigate the question of modification that would have been afforded in the state of origin.¹⁶ Thus, due process requires that a court, in enforcing a foreign decree for alimony arrearages under the comity doctrine, give consideration to modification requests that could have been presented to the courts of the state where the decree was originally entered.¹⁷ It is necessary to assert the right to a retroactive modification under the other state's law before the confirmation and enforcement of the support orders; otherwise a right to a hearing on the modification request is waived.¹⁸

Although a sister state has continuing jurisdiction in a divorce case after the divorce is granted and the defendant has later moved to another state, a judgment in the amount of arrearages is not entitled to full faith and credit if the defendant was not given reasonable notice of the petition for such a judgment as required by due process.¹⁹ A judgment of a court of a foreign nation will be enforced as a matter of comity if the parties were afforded due process by the foreign court even if the procedures of that court do not exactly match those of the local court.²⁰

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Footnotes

- 1 U.S.—*Griffin v. Griffin*, 327 U.S. 220, 66 S. Ct. 556, 90 L. Ed. 635 (1946).
Iowa—*Hansen v. Haagensen*, 178 N.W.2d 325 (Iowa 1970).
- 2 Ill.—*Pratt v. Hawley*, 297 Ill. 244, 130 N.E. 793 (1921).
Mass.—*Lennon v. Cohen*, 264 Mass. 414, 163 N.E. 63 (1928).
Mo.—*Shearer v. Parker*, 364 Mo. 723, 267 S.W.2d 18 (1954).
- 3 U.S.—*Chicago Life Ins. Co. v. Cherry*, 244 U.S. 25, 37 S. Ct. 492, 61 L. Ed. 966 (1917).
- 4 Ala.—*Haas-Phillips Produce Co. v. Lee & Edwards*, 205 Ala. 137, 87 So. 200 (1920).
R.I.—*Trustees of Sheppard and Enoch Pratt Hospital v. Smith*, 114 R.I. 181, 330 A.2d 804 (1975).
Improper service of process
N.J.—*W.S. Frey Co., Inc. v. Heath*, 158 N.J. 321, 729 A.2d 1037 (1999).
- 5 Vt.—*Lakeside Equipment Corp. v. Town of Chester*, 173 Vt. 317, 795 A.2d 1174 (2002).
Due process limitations on jurisdiction, generally, see §§ 1933 et seq.
- 6 Nev.—*Rosenstein v. Steele*, 103 Nev. 571, 747 P.2d 230 (1987).
- 7 U.S. Const. Art. IV, § 1 (discussed in C.J.S., Judgments §§ 1275 et seq.).
- 8 U.S.—*Riverside & Dan River Cotton Mills v. Menefee*, 237 U.S. 189, 35 S. Ct. 579, 59 L. Ed. 910 (1915).
- 9 U.S.—*Riverside & Dan River Cotton Mills v. Menefee*, 237 U.S. 189, 35 S. Ct. 579, 59 L. Ed. 910 (1915).
- 10 N.J.—*W.S. Frey Co., Inc. v. Heath*, 158 N.J. 321, 729 A.2d 1037 (1999).
N.C.—*McGinnis v. McGinnis*, 44 N.C. App. 381, 261 S.E.2d 491 (1980).

Ohio—[Wainscott v. St. Louis-San Francisco Ry. Co.](#), 47 Ohio St. 2d 133, 1 Ohio Op. 3d 78, 351 N.E.2d 466 (1976).

Stranger to decree

Giving a state probate decree the in-personam effect of barring a stranger to the decree from later asserting his rights to assets in another state would deny procedural due process.

U.S.—[Riley v. New York Trust Co.](#), 315 U.S. 343, 62 S. Ct. 608, 86 L. Ed. 885 (1942).

Paternity

If a purported father is deprived of the opportunity to appear in another state's court and defend against judgments that he was the child's father and is required to pay child support, a local court is not required to accord full faith and credit to the judgments, due to lack of due process.

Md.—[Superior Court v. Ricketts](#), 153 Md. App. 281, 836 A.2d 707 (2003).

Colo.—[Marworth, Inc. v. McGuire](#), 810 P.2d 653 (Colo. 1991).

N.J.—[Application of Triffin](#), 151 N.J. 510, 701 A.2d 907 (1997).

Generally discussed in [C.J.S., Judgments § 1274](#).

Colo.—[Gedeon v. Gedeon](#), 630 P.2d 579 (Colo. 1981).

Mo.—[Bittner v. Butts](#), 514 S.W.2d 556 (Mo. 1974).

R.I.—[Black v. Black](#), 119 R.I. 127, 377 A.2d 1308 (1977).

R.I.—[Pezzello Bros. Fruit and Produce Co., Inc. v. Armenakes](#), 677 A.2d 907 (R.I. 1996).

Conn.—[Walzer v. Walzer](#), 173 Conn. 62, 376 A.2d 414 (1977).

Va.—[Alig v. Alig](#), 220 Va. 80, 255 S.E.2d 494 (1979).

N.C.—[Allsup v. Allsup](#), 323 N.C. 603, 374 S.E.2d 237 (1988).

Ark.—[Willett v. Willett](#), 259 Ark. 321, 532 S.W.2d 756 (1976).

Mich.—[Dart v. Dart](#), 460 Mich. 573, 597 N.W.2d 82 (1999).

N.Y.—[CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.](#), 100 N.Y.2d 215, 762 N.Y.S.2d 5, 792 N.E.2d 155 (2003).

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9. Appeals

§ 1997. Right to appeal

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West's Key Number Digest

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Appellate review in civil cases is not an essential requirement of due process if due process of law has been accorded in the tribunal of first instance, but the right to an appeal may not be limited in a discriminatory manner.

Provided due process of law has been accorded in the tribunal of first instance,¹ appellate review is not an essential requirement of due process in civil cases² in the absence of constitutional or statutory provisions to the contrary.³ Thus, due process does not require an appeal if the case involves only property or financial interests.⁴ On the other hand, appellate review is required when a litigant has been denied due process in the trial court regardless of whether the right of appeal is embodied in a statute.⁵

A state that provides a means of appeal may not put limitations on it that are discriminatory, arbitrary, and totally unrelated to any possible state purpose,⁶ and the right to appeal must be available to all parties to any given controversy.⁷ Furthermore, the right to an appeal is a property interest, and a litigant may not be deprived of that interest without being afforded procedural due process.⁸

Footnotes

- 1 U.S.—[Lindsey v. Normet](#), 405 U.S. 56, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972).
Owner deprived of property
An owner deprived of property under a statute is entitled to judicial review only when deprived of the property without due process or if the statutory provisions have not been followed.
Va.—[Stickley v. Givens](#), 176 Va. 548, 11 S.E.2d 631 (1940).
- 2 U.S.—[Lindsey v. Normet](#), 405 U.S. 56, 92 S. Ct. 862, 31 L. Ed. 2d 36 (1972); [State of Ohio ex rel. Bryant v. Akron Metropolitan Park Dist. for Summit County](#), 281 U.S. 74, 50 S. Ct. 228, 74 L. Ed. 710, 66 A.L.R. 1460 (1930).
Idaho—[Tarbox v. Tax Com'n](#), 107 Idaho 957, 695 P.2d 342 (1984).
Ill.—[People v. Taylor](#), 76 Ill. 2d 289, 29 Ill. Dec. 103, 391 N.E.2d 366 (1979).
Ky.—[Cartmell v. Urban Renewal and Community Development Agency of City of Maysville](#), 430 S.W.2d 649 (Ky. 1968).
Md.—[Willis v. Montgomery County](#), 415 Md. 523, 3 A.3d 448 (2010) (not an inherent or inalienable right).
Mass.—[Dickerson v. Attorney General](#), 396 Mass. 740, 488 N.E.2d 757 (1986).
Mich.—[Moore v. Spangler](#), 401 Mich. 360, 258 N.W.2d 34 (1977).
Mo.—[In re Marriage of Valleroy](#), 548 S.W.2d 857 (Mo. Ct. App. 1977).
Neb.—[Nebraska State Bank v. Dudley](#), 203 Neb. 226, 278 N.W.2d 334 (1979).
N.H.—[Ladd v. Coleman](#), 128 N.H. 543, 517 A.2d 811 (1986).
N.C.—[Matter of Vandiford](#), 56 N.C. App. 224, 287 S.E.2d 912 (1982).
R.I.—[Jones v. Aciz](#), 109 R.I. 612, 289 A.2d 44 (1972).
Wash.—[Ford Motor Co. v. Barrett](#), 115 Wash. 2d 556, 800 P.2d 367 (1990).
Matter of grace
Appellate review is matter of grace.
U.S.—[Luckenbach S.S. Co. v. U.S.](#), 272 U.S. 533, 47 S. Ct. 186, 71 L. Ed. 394 (1926).
Judgment debtor
A judgment debtor has no constitutional right to an appeal that would extend the jeopardy of collecting the judgment.
U.S.—[National Union of Marine Cooks and Stewards v. Arnold](#), 348 U.S. 37, 75 S. Ct. 92, 99 L. Ed. 46 (1954).
- 3 D.C.—[N.D. McN. v. R.J.H., Sr.](#), 979 A.2d 1195 (D.C. 2009).
Ky.—[Cartmell v. Urban Renewal and Community Development Agency of City of Maysville](#), 430 S.W.2d 649 (Ky. 1968).
Utah—[Patterick v. Carbon Water Conservancy Dist.](#), 106 Utah 55, 145 P.2d 503 (1944) (overruled on other grounds by, [Timpanogos Planning and Water Management Agency v. Central Utah Water Conservancy Dist.](#), 690 P.2d 562 (Utah 1984)).
- 4 Wash.—[Downey v. Pierce County](#), 165 Wash. App. 152, 267 P.3d 445 (Div. 2 2011).
- 5 Va.—[Stickley v. Givens](#), 176 Va. 548, 11 S.E.2d 631 (1940).
- 6 U.S.—[Adams v. City of Colorado Springs](#), 308 F. Supp. 1397 (D. Colo. 1970), judgment aff'd, 399 U.S. 901, 90 S. Ct. 2197, 26 L. Ed. 2d 555 (1970); [Compton v. Naylor](#), 392 F. Supp. 575 (N.D. Tex. 1975).
- 7 Del.—[State ex rel. Caulk v. Nichols](#), 267 A.2d 610 (Del. Super. Ct. 1970), order aff'd, 281 A.2d 24 (Del. 1971).
Corporation
Denial of a corporation's right to review of a judgment against it because of the expiration of its charter before the entry of the judgment would be a denial of due process.
Colo.—[Bankers Trust Co. v. Hall](#), 116 Colo. 566, 183 P.2d 986 (1947).
Children
A construction of a statute authorizing appeals to a circuit court from a decision of a probate court by any purportedly aggrieved person, which would prevent children from appealing from the dismissal of their petition to appoint a conservator for the person and estate of their aged father, would constitute a denial of due process since the petitioners were admittedly proper parties to bring the proceeding.

III.—*People ex rel. Dombroski v. O'Connell*, 378 Ill. 346, 38 N.E.2d 40 (1941).

Ohio—[Rothman v. Rothman](#), 124 Ohio St. 3d 109, 2009-Ohio-6410, 919 N.E.2d 728 (2009).

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§ 1998. Appeal bond

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A reasonable appeal bond requirement does not deny due process.

If an appellant has had an opportunity to be heard in the initial proceeding by a court having jurisdiction over the subject matter, due process is not violated by requiring the posting of a bond as a prerequisite to an appeal¹ so long as the requirement is reasonable and not excessive.² However, a requirement that appellants post an undertaking in an amount equal to double the judgment violates an indigent defendant's due process rights³ even if the indigent was given an acceptable opportunity to litigate the issues in a lower court.⁴ Furthermore, the requirement of a bond for an appeal from certain small claims court proceedings violates due process.⁵

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Footnotes

¹ Conn.—[Browne v. Peters](#), 33 Conn. Supp. 531, 360 A.2d 131 (Super. Ct. Appellate Sess. 1976).

Del.—*State ex rel. Caulk v. Nichols*, 281 A.2d 24 (Del. 1971).

2 U.S.—*Ross v. Brown Title Corp.*, 356 F. Supp. 595 (E.D. La. 1973), judgment aff'd, 412 U.S. 934, 93 S. Ct. 2788, 37 L. Ed. 2d 394 (1973).

Del.—*State ex rel. Caulk v. Nichols*, 267 A.2d 610 (Del. Super. Ct. 1970), order aff'd, 281 A.2d 24 (Del. 1971).

Detainer action

Statutory requirements for giving bond in an amount double that of the judgment rendered against a tenant for damages for unlawful detainer, and in an amount sufficient to cover one year's rent, were reasonably related to the amount that might be recovered if the landlord prevailed on appeal and thus did not violate due process.

W. Va.—*State ex rel. Reece v. Gies*, 156 W. Va. 729, 198 S.E.2d 211 (1973).

Class action settlement

After reaching a settlement agreement in a class action by customers against a money-wiring service, alleging that the service unlawfully retained funds of failed wire transfers without notifying customers of the failure, the objector's due process or equal protection rights were not violated by imposing a \$5,000 appeal bond upon the settlement-objector pursuing a merits appeal as the amount was not so burdensome as to deprive the objector of her rights since the \$5,000 only involved costs to be paid if the appeal were unsuccessful.

U.S.—*Tennille v. Western Union Co.*, 774 F.3d 1249, 90 Fed. R. Serv. 3d 714 (10th Cir. 2014).

3 Mont.—*Credit Associates, Inc. v. Harp*, 243 Mont. 281, 794 P.2d 343 (1990).

4 Mont.—*Ball v. Gee*, 243 Mont. 406, 795 P.2d 82 (1990).

Indigents' due process rights, generally, see § 2008.

5 Cal.—*Brooks v. Small Claims Court*, 8 Cal. 3d 661, 105 Cal. Rptr. 785, 504 P.2d 1249 (1973).

Idaho—*Frizzell v. Swafford*, 104 Idaho 823, 663 P.2d 1125 (1983).

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§ 1999. Procedure on review, generally

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When an appeal is provided, certain due process rights must be afforded, but appellate procedures do not violate due process if essential rights are preserved and there is no discrimination.

A state is not constitutionally required to provide a right to appeal,¹ particularly if a full and fair trial on the merits has been provided.² However, a state must comply with due process requirements when it does provide for an appeal.³

Courts have upheld, against due process challenges, statutes or rules governing the parties entitled to appeal;⁴ leave to appeal;⁵ the procedure, character, and extent of review in the appellate court;⁶ the appointment of a special justice in the case of the disqualification of an appellate judge;⁷ the determination and disposition of the case,⁸ including the grounds for reversal;⁹ and the authority of an appellate court to order a remittitur.¹⁰ In the absence of any procedural due process arguments suggesting a different result, an appellate court presumes that its rules governing the preservation of error in civil cases comport with due process.¹¹

Under principles of due process, an appellate judge who has a direct personal interest in a particular case may not participate in the decision.¹² Thus, due process is denied if an appellate judge who cast the deciding vote had a similar suit pending against the same defendant in another court.¹³

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Footnotes

- 1 Right to appeal, generally, see § 1997.
- 2 Ga.—*In re N. A. U. E.*, 287 Ga. 797, 700 S.E.2d 393 (2010).
- 3 Kan.—*Nguyen v. IBP, Inc.*, 266 Kan. 580, 972 P.2d 747 (1999).
N.H.—*Ladd v. Coleman*, 128 N.H. 543, 517 A.2d 811 (1986).
Not limited to criminal cases
Wis.—*In re Smythe*, 225 Wis. 2d 456, 592 N.W.2d 628 (1999).
Presumption of correctness on appeal
A presumption that a trial court's decision on appeal is correct does not deny due process.
Ky.—*Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409 (Ky. 1998).
Ohio—*In re Highland Holiday Subdivision*, 27 Ohio App. 2d 237, 56 Ohio Op. 2d 404, 273 N.E.2d 903 (4th Dist. Highland County 1971).
Tenn.—*National Life & Acc. Ins. Co. v. Atwood*, 29 Tenn. App. 141, 194 S.W.2d 350 (1946).
5 Ill.—*Johnson v. Colley*, 111 Ill. 2d 468, 95 Ill. Dec. 832, 490 N.E.2d 685 (1986).
6 U.S.—*Wagner Electric Mfg. Co. v. Lyndon*, 262 U.S. 226, 43 S. Ct. 589, 67 L. Ed. 961 (1923).
Tenn.—*National Life & Acc. Ins. Co. v. Atwood*, 29 Tenn. App. 141, 194 S.W.2d 350 (1946).
Concurrence of judges
A provision that all but one of the judges of a state supreme court must concur to hold a law unconstitutional does not deny due process.
U.S.—*State of Ohio ex rel. Bryant v. Akron Metropolitan Park Dist. for Summit County*, 281 U.S. 74, 50 S. Ct. 228, 74 L. Ed. 710, 66 A.L.R. 1460 (1930).
Notice of appealable orders
For due process purposes, litigants are entitled to reasonable notice of the trial court's appealable orders.
Ohio—*State ex rel. Sautter v. Grey*, 117 Ohio St. 3d 465, 2008-Ohio-1444, 884 N.E.2d 1062 (2008).
7 Ky.—*Kentucky Utilities Co. v. South East Coal Co.*, 836 S.W.2d 407 (Ky. 1992).
8 U.S.—*French v. Corrigan*, 432 F.2d 1211 (7th Cir. 1970); *Estate of Varian v. C.I.R.*, 396 F.2d 753 (9th Cir. 1968).
Ohio—*State ex rel. Sautter v. Grey*, 117 Ohio St. 3d 465, 2008-Ohio-1444, 884 N.E.2d 1062 (2008).
Dismissal
U.S.—*National Union of Marine Cooks and Stewards v. Arnold*, 348 U.S. 37, 75 S. Ct. 92, 99 L. Ed. 46 (1954).
Refusal of new trial
U.S.—*Helis v. Ward*, 308 U.S. 365, 60 S. Ct. 283, 84 L. Ed. 327 (1939).
Miss.—*Mississippi Baptist Hospital v. Holmes*, 214 Miss. 906, 56 So. 2d 709 (1952).
Remands and subsequent proceedings, see § 2004.
9 U.S.—*Tidal Oil Co. v. Flanagan*, 263 U.S. 444, 44 S. Ct. 197, 68 L. Ed. 382 (1924).
10 Ala.—*Life Ins. Co. of Georgia v. Johnson*, 725 So. 2d 934 (Ala. 1998).
11 Tex.—*Pitts & Collard, L.L.P. v. Schechter*, 369 S.W.3d 301 (Tex. App. Houston 1st Dist. 2011).
12 U.S.—*Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986).
13 U.S.—*Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986).

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16D C.J.S. Constitutional Law § 2000

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§ 2000. Time for taking appeal

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Timely notice of the appealable event is necessary to comply with due process.

Timely notice of the appealable event is necessary to comply with due process.¹

Parties taking an appeal have a due process right to be given notice of its pending dismissal.² Thus, a dismissal by the court clerk of an appeal without an official notice of deficiencies in the appeal may deprive the appellant of due process.³

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Footnotes

¹ Okla.—[Larry Jones Intern. Ministries, Inc. v. Means](#), 1997 OK 125, 946 P.2d 669 (Okla. 1997).

No duty of official to give notice

Iowa—[Hyde v. Anania](#), 578 N.W.2d 647 (Iowa 1998) (clerk of small claims court).

² W. Va.—[Ware v. Conner](#), 178 W. Va. 560, 363 S.E.2d 245 (1987).

3 Miss.—[Adams v. Mississippi State Oil & Gas Bd.](#), 80 So. 3d 869 (Miss. Ct. App. 2012).

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16D C.J.S. Constitutional Law § 2001

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§ 2001. Submission on written briefs

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Although due process normally assures parties to an appeal a "hearing," that term does not demand that the communication be oral, and a sufficient hearing is granted by allowing the submission of written briefs.

Although due process normally assures parties to an appeal, a "hearing," that term does not demand that the communication be oral, and a sufficient hearing is granted by allowing the submission of written briefs.¹ More specifically, the denial of oral argument and disposition of an appeal by summary decision does not constitute a violation of due process.² Thus, a mere irregularity that does not affect the validity of the judgment—such as a judge's writing an opinion based on the printed arguments without hearing oral argument—is not a deprivation of property without due process.³ The rules requiring service of briefs on all parties are not complex or technical, nor are they merely to make the court's consideration of the appeal easier; they are fundamental due process requirements that are essential to protect the parties' rights,⁴ not the least of which are those of pro se appellees.⁵

Footnotes

- 1 U.S.—*Groendyke Transport, Inc. v. Davis*, 406 F.2d 1158 (5th Cir. 1969).
Ga.—*Mitchell v. 3280 Peachtree I, LLC*, 285 Ga. 576, 678 S.E.2d 880 (2009) (motion to dismiss appeal).
Iowa—*Wilson v. Vanden Berg*, 687 N.W.2d 575 (Iowa 2004).
Md.—*Miller v. Mathias*, 428 Md. 419, 52 A.3d 53 (2012).
- 2 U.S.—*Magnesium Casting Co. v. Hoban*, 401 F.2d 516 (1st Cir. 1968); *N.L.R.B. v. Local No. 42, Intern. Ass'n of Heat and Frost Insulators and Asbestos Workers*, 476 F.2d 275 (3d Cir. 1973); *George W. Bennett Bryson & Co., Ltd. v. Norton Lilly & Co., Inc.*, 502 F.2d 1045 (5th Cir. 1974).
Mass.—*Schwartz v. Bressler*, 5 Mass. App. Ct. 796, 360 N.E.2d 910 (1977).
Or.—*State ex rel. Reed v. Schwab*, 287 Or. 411, 600 P.2d 387, 24 A.L.R.4th 422 (1979).
- 3 U.S.—*Wagner Electric Mfg. Co. v. Lyndon*, 262 U.S. 226, 43 S. Ct. 589, 67 L. Ed. 961 (1923).
- 4 Ky.—*Vander Boegh v. Bank of Oklahoma, N.A.*, 394 S.W.3d 917 (Ky. Ct. App. 2013).
- 5 Ky.—*Vander Boegh v. Bank of Oklahoma, N.A.*, 394 S.W.3d 917 (Ky. Ct. App. 2013).

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§ 2002. Effect of appellant's default

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There is generally no due process violation if an appeal is denied because of the appellant's default.

An appeal may be denied for failing to comply with a reasonable procedural rule,¹ such as a requirement that questions or claims of error be preserved for review.² A loss of the right of review resulting from an appellant's own fault is not a denial of due process.³ However, procedural due process requires that the appeal be allowed if an attorney faultlessly is denied notice of a critical determination in a proceeding and thus does not complete the procedural requisites necessary to preserve the client's right to appeal.⁴ The dismissal of an appeal denies an appellant due process if the clerk did not provide official notice of the deficiencies as required by a rule of appellate procedure granting the appellant an opportunity to correct them.⁵

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Footnotes

- 1 Ga.—Georgia Dept. of Medical Assistance v. Columbia Convalescent Center, 265 Ga. 638, 458 S.E.2d 635 (1995).
- 2 Ala.—Life & Casualty Ins. Co. of Tennessee v. Womack, 228 Ala. 70, 151 So. 880 (1933).
Tex.—In re B.L.D., 113 S.W.3d 340 (Tex. 2003).
- 3 Ga.—King v. State, 174 Ga. 432, 163 S.E. 168 (1932).
Ill.—Catherwood v. Morris, 351 Ill. 557, 184 N.E. 889 (1933).
N.J.—Mayor and Council of City of Hoboken v. Martin, 121 N.J.L. 214, 1 A.2d 888 (N.J. Sup. Ct. 1938).
Ohio—State ex rel. Fuller v. Mengel, 100 Ohio St. 3d 352, 2003-Ohio-6448, 800 N.E.2d 25 (2003).
R.I.—Hemenway v. Hemenway, 114 R.I. 718, 339 A.2d 247 (1975).
- 4 Colo.—Patterson v. Industrial Commission, 39 Colo. App. 255, 567 P.2d 385 (App. 1977).
- 5 Miss.—Van Meter v. Alford, 774 So. 2d 430 (Miss. 2000).

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§ 2003. Record of proceedings

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An adequate record of the proceedings is a fundamental element of due process, and thus, even in civil proceedings—where liberty is not at stake—courts will require a transcript for appeal if a substantial interest is placed in jeopardy.

An adequate record of the proceedings is a fundamental element of due process.¹ A petitioner must be given an opportunity to create a record sufficient to permit meaningful appellate review of a trial court order that acts as an end-of-the-line disposition.² Thus, even in civil proceedings—where liberty is not at stake—courts will require a transcript for appeal if a substantial interest is placed in jeopardy.³

The unavailability of a transcript may deny an appellant the right to appeal in violation of due process, requiring that a new trial be ordered.⁴ However, a statute granting judges discretion to grant extensions of time for filing a transcript does not violate due process.⁵

Footnotes

- 1 Okla.—[Towne v. Hubbard](#), 2000 OK 30, 3 P.3d 154 (Okla. 2000).
W. Va.—[Smoot v. Dingess](#), 160 W. Va. 558, 236 S.E.2d 468 (1977) (contempt proceeding).
- 2 Okla.—[Cotner v. Golden](#), 2006 OK 25, 136 P.3d 630 (Okla. 2006).
- 3 W. Va.—[Smoot v. Dingess](#), 160 W. Va. 558, 236 S.E.2d 468 (1977).
- 4 Nev.—[Bergendahl v. Davis](#), 102 Nev. 258, 720 P.2d 694 (1986).
- 5 Ga.—[Rogers v. McDonald](#), 226 Ga. 329, 175 S.E.2d 25 (1970).

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§ 2004. Remand and further proceedings

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Due process may require that a case be remanded for further proceedings, and while adequate proceedings must be conducted on remand, the application of the law of the case does not deny due process.

A remand is within an appellate court's powers.¹ Although the failure to remand a case does not result in a denial of due process if the party had their "day in court,"² under some circumstances, an appellate court denies due process by determining certain matters without further proceedings.³

If a case is remanded for further proceedings, the parties are generally entitled to their "day in court" in accordance with the requirements of due process.⁴ However, due process is not denied by a court's refusal to hear new evidence on remand if the party had an opportunity to present it at the original trial.⁵ The application of the law-of-the-case doctrine on remand does not violate due process if a party had an ample opportunity to raise factual issues earlier in the litigation.⁶

It is not contrary to due process to allow judges who have had their initial decisions reversed on appeal to decide the same questions a second time.⁷ Furthermore, there is no denial of due process merely because a trial court decision favorable to a party was reversed and remanded, and the later judgment after a new hearing was not in that party's favor.⁸

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Footnotes

- 1 Mo.—*Faris v. City of Caruthersville*, 349 Mo. 454, 162 S.W.2d 237 (1942).
- 2 U.S.—*Helis v. Ward*, 308 U.S. 365, 60 S. Ct. 283, 84 L. Ed. 327 (1939).
- 3 Okla.—*Carpet World, Inc. v. Riddles*, 1987 OK 42, 737 P.2d 939 (Okla. 1987).
Immunity or negligence
Ga.—*Coweta County v. Simmons*, 269 Ga. 694, 507 S.E.2d 440 (1998).
Injunction after dismissal
A remand for the direct entry of an injunction constituted a denial of a defendant's fundamental due process right to be heard as the case had been dismissed after the plaintiff's evidence and before the defendant had an opportunity to present a defense.
Pa.—*Harmar Ice Associates v. Lignelli*, 546 Pa. 500, 686 A.2d 819 (1996).
Jury challenges
On an appeal of a civil judgment where the trial court failed to hold a hearing to determine whether there was purposeful discrimination during the jury selection process, it would be inconsistent to order a new trial without first giving the challenging party an opportunity to explain the challenges.
Ala.—*Moore v. Ray Sumlin Const. Co., Inc.*, 570 So. 2d 573 (Ala. 1990).- 4 Pa.—*Massachusetts Bonding & Ins. Co. v. Johnston & Harder*, 343 Pa. 270, 22 A.2d 709 (1941) (summary decision by trial court improper).
- 5 Alaska—*Murray v. Murray*, 856 P.2d 463 (Alaska 1993).
- 6 Mont.—*Federated Mut. Ins. Co. v. Anderson*, 1999 MT 288, 297 Mont. 33, 991 P.2d 915 (1999) (abrogated on other grounds by, *Citizens Awareness Network v. Montana Bd. of Environmental Review*, 2010 MT 10, 355 Mont. 60, 227 P.3d 583 (2010)).
- 7 U.S.—*Withrow v. Larkin*, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).
- 8 Mo.—*Thompson v. State Bd. of Registration for Healing Arts*, 244 S.W.3d 180 (Mo. Ct. App. E.D. 2007).

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